SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 305

THE DENVER AND RIO GRANDE WESTERN RAILROAD CO., ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

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[fol. 1] Secretary's Certificate to following transcript (omitted in printing).

[fol. 3]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Application of

RAILWAY EXPRESS AGENCY, INCORPORATED
(A Delaware Corporation)

Under Sections 20a and 214 of the Interstate Commerce Act for authority to issue securities

---

FINANCE DOCKET No. 23324

APPLICATION AND ATTACHED EXHIBITS—
Filed October 7, 1964

[fol. 4] CAPTION

In the matter of application of:

A. Railway Express Agency, Incorporated, 219 East 42nd Street, New York, N. Y. 10017.

B. Applicant is a corporation organized for the purpose of engaging in the transportation of property by express on railroads throughout the United States of America, and in Puerto Rico and Canada. Applicant is also a common carrier by motor vehicle (I.C.C. Docket No. MC66562).

C. Applicant proposes to issue 500,000 shares of its authorized but unissued shares of Common Stock, par value $1 per share.

[File endorsement omitted]

D. Applicant operates in all 50 United States, the District of Columbia, Puerto Rico and Canada.

E. There are no related Finance proceedings pending or to be filed by Applicant.

F. Correspondence with respect to this application should be addressed to:

[fol. 5]

William J. Taylor, Esq.,
General Counsel,
Railway Express Agency, Incorporated,
219 East 42nd Street,
New York, N. Y. 10017

with a copy to:

Henry P. Riordan, Esq.,
Cravath, Swaine & Moore,
1 Chase Manhattan Plaza,
New York, N. Y. 10005

To the INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

The following statements and information, identified by numbers and letters corresponding to those used in Form BF-6, the use of which is required by Section 56.1 of Title 49 of the Code of Federal Regulations, are submitted by Applicant in support of the authority sought:

Item 1. General information respecting applicant

(a) Applicant is a corporation which was organized under the laws of the State of Delaware on December 7, 1928.

(b) A copy of Applicant's Amended Certificate of Incorporation as filed in the State of Delaware on January 29, 1963, and a copy of Applicant's By-Laws with amendments to date were filed with the Commission in Finance Docket No. 22596, *Railway Express Agency, Incorporated, Notes*

and are hereby incorporated in this application by reference.

Item 2. Financial statements

(a) Attached hereto as Exhibit 1 is a verified copy of Applicant's general balance sheet as of the latest practicable date.

[fol. 6] (b) Not Applicable.

(c) Attached hereto as Exhibit 2 is a verified copy of Applicant's income and profit and loss statement for the current calendar year to the latest available date. A copy of such statement for the last calendar year is on file with the Commission in Applicant's annual report.

Item 3. General description of the securities with respect to which this application is made.

(a) This application covers the issue of stock described as follows:

(1) The kind and class: Common Stock, of which there is only one class authorized, of the Applicant.

(2) The number of shares authorized, outstanding and to be issued: 2,576,000 shares authorized, 1,999,188 shares outstanding and 500,000 shares to be issued.

(3) Par value of each share: $1 per share.

(4) Amount: 500,000 shares.

(5) Voting rights: Each share of Common Stock shall have equal voting rights with every other share of Common Stock.

(6) Preferences: None.

(7) Conversion privileges: None.

(8) Call provisions: None.

(9) Liquidation rights: Each share of Common Stock will have equal rights on liquidation with every other share of Common Stock.

[fol. 7] (10) Whether it is assessable: The Common Stock is non-assessable.

(b) Not Applicable.

(c) A specimen of the Common Stock proposed to be issued was filed with the Commission as Exhibit 5 (page 2) in Finance Docket No. 22349, *Railway Express Agency, Incorporated, Stock,* and is hereby incorporated in this application by reference.

(d) Not Applicable.

Item 4. Purposes of the proposed issue or assumption and uses of the proceeds.

The amount of the net proceeds of $10,000,000 to be received by Applicant upon issuance of the Common Stock to be used for each of the following purposes is as follows:

(a) Not Applicable.

(b) Not Applicable.

(c) Not Applicable.

(d) Not Applicable.

(e) Not Applicable.

(f) *Other Purposes:* $10,000,000. The primary purpose to which the proceeds of the issuance of Common Stock will be devoted is the improvement of the balance between Applicant's funded debt and its capital stock by crediting $500,000 to capital stock issued account (No. 791) and $9,500,000 to premium on capital stock account (No. 794). The working capital of Applicant will also be correspond-
[fol. 8] ingly improved by the sale of the shares. Ref-

erence is made to Item 5(a) below for a more complete explanation of the reasons for such application of the proceeds.

Item 5. The facts and circumstances on which the Applicant relies.

(a) The facts and circumstances on which the Applicant relies to establish that the proposed issue

(1) is for some lawful object within its corporate purpose and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the Applicant of service to the public as a common carrier, and which will not impair its ability to perform that service, and

(2) is reasonably necessary and appropriate for such purpose,

are as follows:

Applicant proposes to issue 500,000 shares of its Common Stock to The Greyhound Corporation (hereinafter referred to as "Greyhound"). The proposed issue of stock is for a lawful object within the corporate powers of Applicant as shown by the Amended Certificate of Incorporation of Applicant referred to in Item 1(b) above. The issuance of 500,000 shares of Common Stock will have the effect of bringing about a more normal balance between Applicant's funded debt and its capital stock and this improved relationship will be of benefit to Applicant in financing its [fol. 9] future requirements. Such issuance will also have the effect of broadening the ownership of Applicant's capital stock.

As pointed out in the application filed in Finance Docket No. 22349, Applicant was operated on a non-profit basis from March of 1929 to July of 1961. When the Applicant was put on a profit-and-loss basis on July 1, 1961, it found

that its ratio of debt to capital stock placed it at a disadvantage in attempting to borrow funds. It was to improve this situation and to eliminate the requirement that only railroad companies could be stockholders of Applicant that the Applicant applied for and obtained Commission approval in Finance Docket No. 22349 to reclassify and split Applicant's stock and to remove certain restrictions on its ownership and transfer. The issuance of 500,000 authorized but unissued shares of Common Stock for a total price of $10,000,000, approval of which is requested in this application, would (1) further strengthen Applicant's ratio of capital stock to funded debt and better Applicant's borrowing position and (2) further the purpose expressed in the application and order in Finance Docket No. 22349 by permitting a non-railroad company to become a stockholder of Applicant.

The need for additional borrowings by Applicant is evidenced by the statement of Anticipated Terminal Capital Expenditures for Fiscal Year July 1964-June 1965 and the statement of Automotive Program for Fiscal Year [fol. 10] July 1964-June 1965, both attached hereto as Exhibit 3. As set forth in such statement, Applicant proposes to authorize in such fiscal year expenditures of $27,323,355 for terminal capital projects and $10,481,201 for acquisition of automotive equipment. Both areas of expenditure are obviously crucial to Applicant's operations as an express company, yet it appears that retained earnings will not provide sufficient capital to permit Applicant to make such expenditures and comparable expenditures in future years without borrowings. Although it is possible that a portion of such expenditures may be made out of working capital to the extent management believes that the increase in working capital which will result from the sale of the shares is not required to be retained for that purpose, no specific allocation thereto has been made. To the extent such allocation is made, however, the sale of the shares will reduce to some extent the amount of future borrowings required.

Applicant further believes that the issuance of 500,000 shares of Applicant's Common Stock to Greyhound will give Greyhound a sufficient equity interest in the Applicant to provide a working basis which will justify the Applicant and Greyhound in going forward with the study of, and ultimately entering into an agreement with respect to, the consolidation of certain operating functions and facilities with a view to effecting economies, improving service and increasing public receptivity and patronage. Although it is not possible at this time to predict the exact nature of [fol. 11] the economies and improved service which will result from such a study, Applicant believes that any results achieved thereby will be beneficial to both the Applicant and the public.

The price at which Applicant proposes to issue the shares of Common Stock is $20 per share. Applicant believes such price is very favorable to Applicant.

The proposed issuance of the 500,000 shares of Common Stock has been approved by stockholders holding over 80% of the issued and outstanding capital stock of the Applicant.

(b) Not Applicable.

(c) Not Applicable.

(d) This application is to sell securities without competitive bidding. The issuance of the Common Stock of the Applicant is specifically exempt from competitive bidding requirements under the ruling of the Commission in *Ex Parte 158, In re Competitive Bidding in Sale of Securities,* 257 I.C.C. 129, by reason of the fact that the securities to be issued by Applicant consist solely of common stock.

Item 6. Terms of sale or other disposition, and estimate of expenses.

(a) Applicant proposes to sell the Common Stock at a price of $20 per share upon the terms and conditions set forth in the Agreement referred to in Item 7 hereof and attached hereto as Exhibit 4.

(b) The expenses to be incurred by Applicant in con-
[fol. 12] nection with such sale of the Common Stock are estimated as follows:

(1) There will be no commissions paid or discounts allowed on such sale.

(2) The only expenses to be incurred in connection with the sale would be legal expenses estimated at $5,000 and $10,000 for documentary stamp taxes on the issuance of the shares.

(3) The grand total of commissions, discounts, and expenses is estimated to be $15,000.

Item 7. Contracts, underwritings and other arrangements.

The Applicant proposes to issue the 500,000 shares of its Common Stock to Greyhound pursuant to the terms of an Agreement between Applicant and Greyhound, a copy of which is attached hereto as Exhibit 4.

Item 8. Resolutions and other authorizations.

(a) Attached hereto as Exhibit 5 are certified copies of resolutions of the Board of Directors of Applicant authorizing the transaction and designating by name and for that purpose the executive officer by whom this application is signed, verified and filed on behalf of the Applicant.

(b) Attached hereto as Exhibit 6 are certified copies of resolutions of the stockholders of the Applicant authorizing such issue, accompanied by transcripts of the minutes of their meetings showing the number of shares voted for and
[fol. 13] against the resolutions, and the number of share-votes required to adopt the resolutions.

(c) See Item 8(a) above.

(d) Not Applicable.

(e) Not Applicable.

Item 9. Opinion of Counsel.

Attached hereto as Exhibit 7 is an opinion of counsel for Applicant meeting the requirements of Item 9.

WHEREFORE, Applicant prays that the Commission enter an order under Sections 20a and 214 of the Interstate Commerce Act authorizing the proposed issue as described in this application.

Dated this 6th day of October, 1964.

RAILWAY EXPRESS AGENCY, INCORPORATED,
by /s/ WILLIAM B. JOHNSON
President

[fol. 14] *Duly sworn to by William B. Johnson, jurat omitted in printing.*

[fol. 15] Certificate of Service (omitted in printing).

RAILWAY EXPRESS AGENCY, INCORPORATED
GENERAL BALANCE SHEET AS OF JUNE 30,1964

A S S E T S

CURRENT ASSETS:		
Cash with Treasurer (See Note 1)		$ 22 361 594
Special Deposits		7 100
Loans and Notes Receivable		26 866 921
Traffic Balances Receivable		293 254
Net Balances Receivable from Agencies		16 990 732
Miscellaneous Accounts Receivable		4 087 117
Material and Supplies		625 467
Interest, Dividends and Rents Receivable		152 560
Working Fund Advances		5 125
Other Current Assets		1 248 678
Total Current Assets		$ 72 538 548
INVESTMENT:		
Real Property and Equipment	$131 817 575	
Less - Accrued Depreciation	75 890 364	
	$ 55 927 211	
Investments in Affiliated Companies:		
Stocks	$ 548 500	
Notes	550 000	
Total Investments in Affiliated Companies	$ 1 098 500	
Other Investments - Stocks and Bonds	1 040	
Total Net Investment		$ 57 026 751
DEFERRED ASSETS:		
Insurance and Other Reserve Funds	$ 80 260	
Other Deferred Assets	87 205	
Total Deferred Assets		157 465
UNADJUSTED DEBITS:		
Rents and Insurance Premiums Paid in Advance	$ 85 178	
Taxes Paid in Advance	799 666	
Other Unadjusted Debits	370 208	
Total Unadjusted Debits		1 255 052
TOTAL ASSETS		$131 087 816

L I A B I L I T I E S

CURRENT LIABILITIES:		
Traffic Balances Payable		$ 264 345
Audited Accounts and Wages Unpaid		14 172 192
Miscellaneous Accounts Payable		4 114 897
Matured Interest Unpaid		68 300
Miscellaneous Advances Payable		3 580
Unpaid Money Orders, Checks and Drafts		1 063 432
To Carriers for Hauling Express		11 787 312
Estimated Tax Liability		4 783 521
Unmatured Interest, Dividends and Rents Payable		436 897
Other Current Liabilities		13 282 357
Total Current Liabilities (See Note 1)		$ 49 976 833
ADVANCES FROM STOCKHOLDERS		$ 27 637 054
NOTES PAYABLE (See Note 2)		$ 8 468 000
EQUIPMENT OBLIGATIONS		
Automotive Equipment	$17 877 293	
Refrigerator Cars	6 404 450	
Total Equipment Obligations (See Note 3)		$ 24 281 743
DEFERRED LIABILITIES		$ 129 643
UNADJUSTED CREDITS:		
Tax Depreciation Equalization Reserve	$ 6 643 857	
Operating and Insurance Reserve (See Note 4)	3 352 021	
Other Unadjusted Credits	59 601	
Total Unadjusted Credits		$ 10 055 479
STOCK:		
Capital Common Stock - Issued and Outstanding		$ 1 999 188
CORPORATE SURPLUS:		
Profit and Loss Balance		8 539 876
TOTAL LIABILITIES		$131 087 816

NOTE 1: At June 30, 1964, there were outstanding $9,030,597 of checks, vouchers and drafts issued prior to July 1, 1964. This total is included in Current Liabilities and Cash with Treasurer.

NOTE 2: Notes Payable of $8,468,000 include installments of $425,000 due to be paid during Fiscal Year ending June 30, 1965.

NOTE 3: Equipment Obligations of $24,281,743 include installments of $5,744,064 due to be paid during Fiscal Year ending June 30, 1965.

NOTE 4: Operating and Insurance Reserves include $3,268,798 which it is expected will be paid during Fiscal Year ending June 30, 1965.

CERTIFIED CORRECT:

New York, October 2, 1964

Vice President and Controller

Controller's Department

EXHIBIT 1 TO APPLICATION

[fol. 16]

RAILWAY EXPRESS AGENCY, INCORPORATED

Results of Operations - 6 Months ended June 30, 1964

Revenues and Income	
Charges for Transportation	$196 673 373
Other Revenues and Income	5 043 959
Total Revenues and Income	$201 717 332
Deductions from Revenues and Income	
Operating Expenses	$130 830 216
Express Taxes	11 216 052
Interest on Funded Debt	1 585 524
Other Deductions	274 458
Payments to Rail and Other Carriers for Hauling Express	56 713 074
Total Deductions	$200 619 324
Net Profit from Operations	$ 1 098 008
Provision for Income Taxes	$ 158 398
Net Profit	$ 939 610

Certified Correct

Vice President and Controller

New York, October 2, 1964

Controller's Department

EXHIBIT 2 TO APPLICATION

[fol. 17]

ANTICIPATED TERMINAL CAPITAL EXPENDITURES FOR FISCAL YEAR JULY-1964-JUNE-1965

Locations			Total Cost	Amt. to be expended July, 1964-June, 1965	
Terminal Projects Completion Date This Fiscal Year					
Dayton,	Ohio	$768 971		$ 768 971	
Memphis,	Tenn.	650 000		650 000	
Jacksonville,	Fla.	150 000		150 000	
Brunswick,	Ga.	60 000		60 000	
Poughkeepsie,	N.Y.	205 575		205 575	
Atlantic City,	N.J.	150 000		150 000	
Wilmington,	Del.	300 000		300 000	
Providence,	R.I.	500 000		500 000	
Omaha,	Nebr.	472 925		472 925	
St. Louis,	Mo.	550 000		550 000	
Colorado Springs,	Colo.	35 000		35 000	
Albany,	N.Y.	50 000		50 000	
			$3 892 471		$3 892 471
Air Express Terminal Projects Completion Date This Fiscal Year					
Chicago,	Ill.	$999 665		$ 999 665	
Detroit,	Mich.	245 400		245 400	
Minneapolis,	Minn.	110 000		110 000	
Los Angeles,	Calif.	220 000		220 000	
San Francisco,	Calif.	110 000		110 000	
			1 685 065		1 685 065
Terminal Projects Completion Date Beyond This Fiscal Year					
Boston,	Mass.	$4 350 000		$2 500 000	
Detroit,	Mich.	3 500 000		500 000	
Indianapolis,	Ind.	1 470 819		1 000 000	
Minneapolis,	Minn.	1 700 000		699 819	
Cleveland,	Ohio	2 500 000		1 000 000	
Atlanta,	Ga.	3 900 000		1 000 000	
Washington,	D.C.	3 500 000		1 000 000	
			20 920 819		7 699 819
Material Handling Systems Completion Date This Fiscal Year					
Jacksonville,	Fla.	$500 000		$500 000	
PPM Terminal,	N.J.	75 000		75 000	
			575 000		575 000
Additional expenditure to cover modification of present systems, replacements of outmoded conveyors and requests for conveyor equipment required for terminal improvement program projects			50 000		50 000
Alterations of Facilties for Projex Rooms 10 @ $20,000 each			200 000		200 000
	TOTAL		$27 323 355		$14 102 355

[fol. 18]

AUTOMOTIVE PROGRAM
FOR FISCAL YEAR JULY 1964-JUNE 1965

Replacements		Cost	
300	Trucks	$1 260 000	
700	Trucks	4 060 000	
50	Gas Tractors	397 500	
25	Diesel Tractors	340 000	
40	Trailers	222 680	
131	Passenger Cars	252 175	
80	Depot Units	360 000	
1 326		$6 892 355	
	Predicted Cost Increase 2%	137 847	
	Freight & Miscellaneous Charges 4-3/4%	333 935	$ 7 364 137
Additions			
47	Trucks	$ 292 300	
98	Tractors	1 319 800	
154	Trailers	889 218	
1	Passenger Car	1 925	
88	Misc. Terminal Eqpt.	276 770	
388		$2 780 013	
	Freight & Miscellaneous Charges 4-3/4%	132 051	2 912 064
Containerization			
3	Dempster Sideloaders	$ 52 300	
20	Trailer Chassis	43 260	
60	Unit Haul Containers	109 440	205 000
	TOTAL		$10 481 201

[fol. 20]

EXHIBIT 4 TO APPLICATION

October 1, 1964

The Greyhound Corporation
140 South Dearborn Street
Chicago 3, Illinois

Dear Sirs:

On September 1, 1964, the Board of Directors of this Corporation (hereinafter called R E A) authorized its President in the name of R E A to make a firm offer to sell to you 500,000 shares of R E A's authorized but unissued Common Stock at the price of $20 per share upon the following terms and conditions:

(a) The R E A By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the R E A Board of Directors.

(b) The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

(d) The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or

the general public if and when conditions appear favorable to the best interests of R E A as a company.

[fol. 21] (e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of R E A from present shareholders at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of R E A.

(f) The offer of R E A shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of R E A may be accepted immediately, subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

At the meeting of the Board on September 1, the Board also adopted resolutions complying with the conditions set forth in subparagraphs (b), (c) and (d) above and called a special meeting of stockholders in order to obtain the approval of R E A stockholders of the issuance of the shares pursuant to said offer and of the amendments to the R E A By-Laws referred to in subparagraph (a) above. On October 1, 1964, the stockholders approved the issuance of the shares pursuant to the offer and approved said amendments, thereby complying with the condition set forth in subparagraph (a) above. Certified copies of the said resolutions as adopted by the Board and by the stockholders at that meeting are enclosed herewith.

In accordance with the foregoing authorization, R E A hereby makes a firm offer to sell to you, subject to the ob-

taining of the authorizations from the Interstate Commerce Commission contemplated by subparagraph (g) of the preceding paragraph, 500,000 shares of authorized but unissued common stock of R E A at the price of $20 per share on the terms and conditions set forth in the preceding paragraph.

If you desire to accept such offer, please sign the acceptance at the foot of the enclosed copy of this letter and [fol. 22] return the same to the undersigned, whereupon this letter and such acceptance shall constitute a binding agreement between R E A and you.

This letter will also serve to confirm our understanding that (1) R E A will, subject to your acceptance of this offer, promptly file an application with the Interstate Commerce Commission pursuant to Sections 20a and 214 of the Interstate Commerce Act for authorization to issue and sell to you the 500,000 shares of R E A common stock pursuant to this offer, (2) settlement for said 500,000 shares will be made within 30 days after authorization is received from the Interstate Commerce Commission for the issuance and sale of said shares, and (3) compliance by you with the conditions set forth in subparagraph (e) of said first paragraph shall be deemed to have been made if the tender offer referred to therein is made at the time of settlement for said 500,000 shares and the period during which stock may be tendered remains open for sixty days thereafter.

As you know, the shares tendered pursuant to any tender offer will be subject to rights of first refusal which have been granted to other shareholders. You will, of course, have no obligation to purchase shares in respect of which such right of first refusal is exercised.

Very truly yours,

RAILWAY EXPRESS AGENCY, INCORPORATED

By /s/ WILLIAM B. JOHNSON
President

The foregoing offer of Railway Express Agency, Incorporated is hereby accepted, subject to all necessary authorizations from the Interstate Commerce Commision.

THE GREYHOUND CORPORATION

By /s/ F. W. ACKERMAN
President and Chairman of the Board

Dated: October 6, 1964

[fol. 23]

EXHIBIT 4, APPENDIX A

Certified copy of the resolutions adopted by the Board of Directors of Railway Express Agency, Incorporated on September 1, 1964 (refer to Exhibit 5, side folios 25 through 30).

[fol. 24]

EXHIBIT 4, APPENDIX B

Certified copy of the resolutions adopted at a Special Meeting of the Stockholders of Railway Express Agency, Incorporated on October 1, 1964 (refer to Exhibit 6, side folios 35 through 37).

[fol. 25]

EXHIBIT 5 TO APPLICATION

I hereby certify that at a meeting of the Board of Directors of Railway Express Agency, Incorporated, duly called and held in the City of New York on September 1, 1964, a quorum being present, the following resolutions were adopted:

RESOLVED, that the President or any Vice President of this corporation be, and he hereby is, authorized in the name and on behalf of this corporation to execute

and deliver to The Greyhound Corporation a firm offer to sell to The Greyhound Corporation 500,000 shares of authorized but unissued common stock of this corporation at the price of $20 per share, upon the following terms and conditions:

(a) The R E A By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the R E A Board of Directors.

(b) The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

(d) The REA Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the general public if and when conditions appear favorable to the best interests of R E A as a company.

(e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of R E A from present shareholders at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of R E A.

[fol. 26] (f) The offer of R E A shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of R E A may be accepted immediately subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

RESOLVED, that this Board of Directors recommends to the stockholders of this corporation that they approve the issuance to The Greyhound Corporation pursuant to the offer set forth in the next preceding resolution of 500,000 shares of authorized but unissued common stock of this corporation.

RESOLVED, that this Board of Directors recommends to the stockholders of this corporation that, effective upon acceptance of the foregoing offer by The Greyhound Corporation, the By-Laws of this corporation be amended as follows:

A. Section 2 of Article II of the By-Laws of this corporation shall be amended so as to read in its entirety as follows:

"An annual meeting of stockholders shall be held on the first Wednesday of April in each year at eleven o'clock A.M. at which meeting there shall be elected by ballot a Board of Directors, not to exceed twenty-five in number. There may be seven Directors-At-Large, and the others shall be the persons nominated by districts as provided in Section 8 of this Article; provided, however, that if at any time any corporation or corporations engaged in whole or in part in the common carriage

of passengers by bus (hereinafter called Bus Company Stockholders) are the holders of at least 20% of the stock issued and outstanding, the Bus Company Stockholders shall be entitled to nominate five of the Directors-At-Large in the manner provided in the next succeeding paragraph. The number, not to exceed eighteen, so nominated by districts shall be determined as provided in said Section 8. At such meeting there shall be transacted such other business as may properly be brought before the meeting.

[fol. 27] "Not more than thirty nor less than fifteen days prior to the date of the annual meeting of stockholders, the Secretary of the Corporation shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, send to each Bus Company Stockholder a form of vote for the number of and for nominations for five Directors-At-Large. Each Bus Company Stockholder receiving the same shall thereupon name the persons proposed by such Bus Company Stockholder as nominees for five Directors-At-Large and return such vote to the Secretary with a statement of the number of shares voted by such Bus Company Stockholder in favor of each such nominee. Each Bus Company Stockholder shall be entitled to the same number of nominating votes for each of its said nominees for directors as the number of shares of stock which such Bus Company Stockholder will be entitled to vote at such annual meeting. The Secretary shall canvass the nominating votes of the Bus Company Stockholders received by him prior to such annual meeting and shall report the same to the stockholders at the meeting. The five nominees receiving the most nominating votes shall be the nominees for the five Directors-At-Large to be nominated by the Bus Company Stockholders."

B. Article XI of the By-Laws of this Corporation shall be amended by deleting the period at the end thereof and adding an additional proviso at the end of said Article XI reading as follows:

"; and provided further that if any such alteration or amendment be made in the number of Directors of this corporation or in the method of nominating Directors-At-Large of this corporation, said affirmative vote of two-thirds of the stock issued and outstanding and entitled to a vote shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, include a majority of the issued and outstanding stock held by the Bus Company Stockholders."

RESOLVED, that a special meeting of the stockholders of this corporation (hereinafter in these resolutions sometimes called the Meeting) be, and it hereby is, called to be held at the office of this corporation, 219 East 42nd Street, New York, New York, at 10 A.M., Eastern Daylight Time, on October 1, 1964, to consider and vote upon the following:

(1) the proposed amendments to the By-Laws of this corporation recommended by the Board of Directors in the next preceding resolution (hereinafter called the By-Law Amendments);

[fol. 28] (2) the approval of the issuance by this corporation of the 500,000 shares of capital stock of this corporation to be issued to The Greyhound Corporation as contemplated by the offer of R E A to The Greyhound Corporation approved at this meeting (hereinafter called the Stock Approval); and

(3) to transact such other business as may properly come before the meeting or any adjournment thereof;

RESOLVED, that Messrs. Frank E. Barnett, Fred Carpi, Prime F. Osborn and William B. Johnson, or

any of them, with full power of substitution, be, and they hereby are, appointed as a Proxy Committee to act on behalf of and represent such stockholders of this corporation as may appoint them their proxy to act for them at the Meeting and at any adjournment thereof;

RESOLVED, that the Secretary of this corporation be, and he hereby is, authorized and directed to give written notice of the Meeting, not less than 10 days before the day fixed for the Meeting, to each stockholder of this corporation entitled to vote at the Meeting, by mailing or causing to be mailed a copy of such notice in a postage prepaid envelope addressed to such stockholder at his post-office address as such address shall appear on the books of this corporation;

RESOLVED, that the Secretary of this corporation be, and he hereby is, authorized and directed to enclose or cause to be enclosed with each such notice to be mailed as provided in the next preceding resolution, copies of a Proxy Statement and Proxy in such form as shall be approved by the President or any Vice President of this corporation; and

RESOLVED, that Messrs. C. D. Vannoy and Alan F. Doniger be, and they hereby are, appointed Judges to conduct at the Meeting a vote of the holders of the capital stock of this corporation for and against the By-Law Amendments, the Stock Approval, and any other vote taken by ballot at the Meeting, and that such Judges in the exercise of the authority vested in them by the laws of the State of Delaware shall decide upon the qualifications of the voters and accept the votes of those qualified to vote for or against the By-Law Amendments and the Stock Approval, and when the vote thereon shall have been completed, count and ascertain the number of shares voted, respectively, for and against the By-Law Amendments and the Stock Approval, and declare whether the persons or bodies

[fol. 29] corporate holding two-thirds of the capital stock of this corporation entitled to vote thereon have voted for the By-Law Amendments and the Stock Approval, and make out a certificate stating (i) the number of shares of capital stock issued and outstanding and entitled to vote on the By-Law Amendments and the Stock Approval and (ii) the number of shares of capital stock voted for, and the number thereof voted against, the By-Law Amendments and the Stock Approval, respectively, and subscribe and deliver said certificate to the Secretary of this corporation.

RESOLVED, that upon acceptance of the offer by The Greyhound Corporation, Messrs. William B. Johnson, President, and C. D. Vannoy, Vice President and Treasurer of the company, be, and they hereby are, authorized to explore the possibility of refinancing the $27,637,054 principal amount of outstanding 5% notes, issued originally to this corporation's stockholders, or otherwise securing the waiver or cancellation of the prohibition against the payment of dividends which is contained in said notes; and upon the submission by such officers to this Board of a satisfactory program, this Board will take all such further action as may be necessary.

RESOLVED, that upon acceptance of the offer by The Greyhound Corporation, the President and any Vice Presidents whom he may designate are hereby authorized to undertake the negotiation of a long-term agreement with The Greyhound Corporation encompassing the consolidating of operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage; and upon the submission by the proper officers of this corporation to this Board of a satisfactory agreement, this Board will take all such further action as may be necessary to approve the same.

RESOLVED, that, upon acceptance of the R E A offer by The Greyhound Corporation, if and when the conditions appear favorable to the best interests of this corporation, the President is authorized and directed to submit to this Board of Directors a program pursuant to which airlines and/or the general public could acquire interests in the stock of this corporation; and, upon receipt of such a recommendation, this Board will consider seriously a program of such nature.

RESOLVED, that William B. Johnson, President, and C. D. Vannoy, Vice President and Treasurer, be and they hereby are, and each of them individually hereby is designated and authorized as the executive office to make, sign, verify and file an application to the Interstate Commerce Commission under Sections 20a and [fol. 30] 214 of the Interstate Commerce Act for authority to issue and deliver to The Greyhound Corporation 500,000 shares of this corporation's authorized and unissued common stock and for such other authority as may be necessary to effectuate the foregoing resolutions; and

RESOLVED, that the proper officers of this corporation be, and they hereby are, authorized to pay all such costs and expenses, and to take any and all other action and to execute, under the corporate seal of this corporation or otherwise, and deliver all such further instruments and documents as they in their discretion may deem necessary, proper or advisable in order to accomplish the purposes of the foregoing resolutions and each of them.

I further certify that the said resolutions have not been modified or revoked.

Dated: October 1, 1964.

/s/ LAWRENCE BERMAN
Secretary

(SEAL)

[fol. 31]

EXHIBIT 6 TO APPLICATION

MINUTES OF SPECIAL MEETING OF THE STOCKHOLDERS OF RAILWAY EXPRESS AGENCY, INCORPORATED, OCTOBER 1, 1964

Pursuant to notice dated September 1, 1964, a Special Meeting of the Stockholders of Railway Express Agency, Incorporated (the Corporation) was held at the Office of the Corporation, 219 East 42nd Street, New York, New York, on Thursday, October 1, 1964, at 10:00 A.M., New York time.

In accordance with the provisions of Article II, Section 7, of the Corporation's By-Laws, William B. Johnson, President, acted as Chairman. Lawrence Berman, Secretary, acted as Secretary of the meeting.

There were present three members of the Proxy Committee—Fred Carpi, Prime F. Osborn and William B. Johnson—and the Judges for the conduct of the meeting—C. D. Vannoy and Alan F. Doniger—all of whom were appointed by the Corporation's Board of Directors at its meeting on September 1, 1964.

There also were present representing stockholders—Wayne M. Hoffman, New York Central System, Edwin O. Schiewe, Chicago, Milwaukee, St. Paul and Pacific Railroad, Anthony Kane, Great Northern Railway, Earl F. Requa, Northern Pacific Railway, Alan C. Furth, Southern Pacific Company and T. M. Caiazza, The Atchison, Topeka and Santa Fe Railway Company.

The Chairman directed that the oath of the Secretary and of the two Judges be annexed to the minutes of the meeting as Exhibit I.

The Secretary then presented an affidavit showing that the Notice of Meeting, the Proxy Statement and the Form of Proxy were duly mailed on September 1, 1964, to each [fol. 32] stockholder of record and the Chairman directed that the affidavit be annexed to the minutes of the meeting as Exhibit II.

The Secretary presented a complete list, arranged in alphabetical order, of the holders of record of the Common Stock of the Corporation entitled to vote at the meeting. The list showed that 1,999,188 shares of Common Stock of the Corporation were issued and outstanding. The Chairman directed that the list of stockholders be delivered to the Judges and that it be kept available for inspection during the meeting.

Upon request of the Chairman, the Secretary reported that a total of 1,924,452 shares of the Corporation's stock was present or represented by proxy at the meeting, and the Chairman declared that a quorum was present and that the meeting would proceed.

The Chairman stated that the minutes of the last meeting of the stockholders were available for inspection both during and after the meeting and that unless there were objection they would not be read. There was no objection.

The Chairman stated that the first matter to be acted upon was the approval by the stockholders of the issuance by the Corporation of 500,000 authorized but unissued shares of Common Stock of the Corporation to The Greyhound Corporation (Greyhound) pursuant to an offer to be made to Greyhound authorized by the Board of Directors on September 1, 1964. The Chairman indicated that pursuant to a resolution adopted by the stockholders of the Corporation at a Special Meeting on September 17, 1962, [fol. 33] approval of such issuance by the holders of at least two-thirds of the Corporation's Common Stock issued and outstanding was required and that the Board of Directors recommended to the stockholders that they approve such issuance. Upon request of the Chairman, the Secretary read the resolution proposed to be adopted and upon a motion by Mr. Carpi and seconded by Mr. Osborn, the resolution was put to a vote. The First Report by the Judges, which sets forth in full the resolution, showed that the vote was 1,654,572 shares in favor of and 269,880 shares opposed to the resolution. The Chairman declared that the

resolution had been duly adopted by the holders of more than the required two-thirds of the Corporation's issued and outstanding Common Stock and directed that the report be attached to the minutes of the meeting as Exhibit III.

The second matter acted upon was a proposal to amend the By-Laws of the Corporation, described in Proposal No. 2 in the Proxy Statement, to increase the number of members of the Board of Directors from 23 to 25 and to increase the number of Directors-At-Large from 5 to 7. The proposed amendment would also provide that 5 Directors-At-Large be nominated by stockholders of the Corporation holding 20% of the issued and outstanding stock of the Corporation who are engaged in whole or in part in the common carriage of passengers by bus and would require the approval of a majority of the Corporation's stock held by such bus company stockholders for any future change in the number of directors or in the method of nominating Directors-At-Large. The Chairman informed the meeting that a resolution recommending the proposed amendment had been adopted by the Board of Directors and, upon his [fol. 34] request, the Secretary read the resolution proposed to be adopted by the stockholders. Upon motion by Mr. Osborn, seconded by Mr. Hoffman, the resolution to authorize the adoption of the proposed amendment was put to a vote. The Second Report by the Judges, which sets forth in full the resolution, showed that the vote was 1,654,572 shares in favor of and 269,880 shares opposed to the resolution. The Chairman declared that the resolution had been duly adopted by the holders of more than the required two-thirds of the Corporation's issued and outstanding Common Stock and directed that the report be attached to the minutes of the meeting as Exhibit IV.

All votes taken at the meeting, except as specifically stated herein, were taken by written ballot. There being no further business to come before the meeting, upon mo-

tion by Mr. Hoffman, seconded by Mr. Carpi, the meeting was adjourned by voice vote.

/s/ Lawrence Berman
Lawrence Berman
Secretary

[fol. 35] I hereby certify that at a special meeting of the stockholders of Railway Express Agency, Incorporated, duly called and held in the City of New York on October 1, 1964, a quorum being present, the following resolutions were adopted:

Resolved, that, subject to all necessary Interstate Commerce Commission authorizations, the stockholders of this Corporation approve the issuance by this Corporation to The Greyhound Corporation of 500,000 shares of authorized but unissued shares of Common Stock of this Corporation in accordance with the offer of this Corporation to The Greyhound Corporation authorized by the Board of Directors of this Corporation at its meeting on September 1, 1964.

Resolved, that, subject to the acceptance by The Greyhound Corporation of the offer of this Corporation to The Greyhound Corporation authorized by the Board of Directors of this Corporation at its meeting on September 1, 1964, the stockholders of this Corporation hereby amend the By-Laws of this Corporation (i) to increase the number of members of the Board of Directors from 23 to 25, (ii) to increase the number of Directors-At-Large from five to seven, (iii) to provide for the nomination of five Directors-At-Large by stockholders holding at least 20% of the issued and outstanding stock of this Corporation who are engaged in whole or in part in the common carriage of passengers by bus, and (iv) to provide for a vote by such bus company stockholders upon certain amendments to the By-Laws of this Corporation, said amendment of the By-Laws to be effected by

A. Deleting Section 2 of Article II of the By-Laws of this Corporation and substituting therefor the following:

"An annual meeting of stockholders shall be held on the first Wednesday of April in each year at eleven o'clock A.M., at which meeting there shall be elected by ballot a Board of Directors, not to exceed twenty-five in number. There may be seven Directors-At-Large, and the others shall be the persons nominated by districts as provided in Section 8 of this Article; provided, however, that if at any time any corporation or corporations engaged in whole or in part in the common carriage of passengers by bus (hereinafter called Bus Company Stockholders) are the holders of at least 20% of the stock issued and outstanding, the Bus Company Stockholders shall be entitled to nominate five of the Directors-At-Large in the [fol. 36] manner provided in the next succeeding paragraph. The number, not to exceed eighteen, so nominated by districts shall be determined as provided in said Section 8. At such meeting there shall be transacted such other business as may properly be brought before the meeting.

"Not more than thirty nor less than fifteen days prior to the date of the annual meeting of stockholders, the Secretary of the Corporation shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, send to each Bus Company Stockholder a form of vote for the number of and for nominations for five Directors-At-Large. Each Bus Company Stockholder receiving the same shall thereupon name the persons proposed by such Bus Company Stockholder as nominees for five Directors-At-Large and return such vote to the Secretary with a statement

of the number of shares voted by such Bus Company Stockholder in favor of each such nominee. Each Bus Company Stockholder shall be entitled to the same number of nominating votes for each of its said nominees for directors as the number of shares of stock which such Bus Company Stockholder will be entitled to vote at such annual meeting. The Secretary shall canvass the nominating votes of the Bus Company Stockholders received by him prior to such annual meeting and shall report the same to the stockholders at the meeting. The five nominees receiving the most nominating votes shall be the nominees for the five Directors-At-Large to be nominated by the Bus Company Stockholders."

B. Deleting the period at the end of Article XI of said By-Laws and adding an additional proviso at the end thereof reading as follows:

"; and provided, further that if any such alteration or amendment be made in the number of Directors of this Corporation or in the method of nominating Directors-At-Large of this Corporation, said affirmative vote of two-thirds of the stock issued and outstanding and entitled to a vote shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, include a majority of the issued and outstanding stock held by the Bus Company Stockholders."

[fol. 37] I further certify that the said resolutions have not been modified or revoked.

Dated: October 1, 1964.

/s/ LAWRENCE BERMAN
Secretary

(Seal)

[fol. 38]

EXHIBIT 7 TO APPLICATION

OPINION OF COUNSEL

In my opinion, the issue of stock with respect to which this application is made is for a lawful object within the Applicant's corporate purposes; is compatible with the public interest; is necessary or appropriate for, or consistent with, the proper performance by the Applicant of service to the public as a common carrier; will not impair Applicant's ability to perform that service; is reasonably necessary and appropriate for such purposes; and will be legally authorized and valid if approved by the Interstate Commerce Commission.

/s/ WILLIAM J. TAYLOR
General Counsel

[fol. 39]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

SUPPLEMENT TO APPLICATION—Filed October 13, 1964

RAILWAY EXPRESS AGENCY, INCORPORATED
219 East 42nd Street
New York, N.Y. 10017

Secretary, Interstate Commerce Commission, 12th and Constitution, Washington 25, D. C.

October 12, 1964

Railway Express Agency, Incorporated, Stock
(Finance Docket No. 23324)

Dear Sir:

We refer to the application filed in Finance Docket No. 23324 on October 7, 1964 by Railway Express Agency, Incorporated (hereinafter called REA) under Sections 20a and 214 of the Interstate Commerce Act for authority to issue 500,000 shares of REA's Common Stock, par value $1 per share, to The Greyhound Corporation (hereinafter called Greyhound) pursuant to the terms and conditions set forth in the application. At the request of Mr. Frank E. Grutzik, Assistant Chief of the Section of Proceedings, Bureau of Finance of the Interstate Commerce Commission, this letter will discuss two questions raised with respect to the application.

1. *Application of Proceeds of Issue*

The proceeds of $10,000,000 from the issuance of 500,000 shares of REA's Common Stock to Greyhound will be ap-

[File endorsement omitted]

plied by REA for the purpose of (a) reimbursing REA in part for cash expenditures made from retained earnings of REA for additions and betterments or other capital expenditures, and (b) to provide funds for required additional capital expenditures to be made by REA in the future. REA had no retained earnings until July of 1961, when the Standard Express Operations Agreement between REA and the railroad carriers parties thereto was amended to put REA on a profit and loss basis. In 1960 REA began a capital improvement program; prior to that time, REA had either leased the major portion of its facilities or used facilities owned by other carriers.

[fol. 40] From 1960 through August 20, 1964, REA expended a total of $16,936,938 for capital expenditures in connection with the acquisition and modernization of terminals. There is enclosed herewith a schedule showing the purposes of the disbursements, the amount thereof and all credits in respect thereof to capital account within the period and the primary accounts of the Commission's classifications to which disbursements and retirements were charged or credited during the period. During the same period REA borrowed for such purposes a total of $8,500,000 (of which $8,468,000 is presently unpaid) and thus was required to finance from internally generated funds (e.g., earnings, depreciation, etc.) the balance of such capital expenditures, namely, $8,436,938 plus the payments on that portion of the loans repaid. In view of REA's short history of profitable operations it has not, of course, been easy for REA to effect this long overdue capital improvement program.

The additional capital expenditures required to complete the unfinished terminal projects listed in the enclosed schedule are estimated at $3,536,289. Moreover, as set forth in Exhibit 3 to the application, in addition to the $10,481,201 automotive program, REA's anticipated capital expenditures on new terminal projects for the fiscal year July 1964-June 1965 are $14,102,355, with the total comple-

tion costs of these new projects estimated at $27,323,355. At the present time, REA has no commitments for borrowings for such purposes in excess of $4,000,000.

The proceeds of the sale of REA Common Stock to Greyhound will be of immeasurable assistance to REA in financing its capital program and will be applied thereto.

2. *Possibility of Control of REA by Greyhound*

The question has been raised whether the acquisition of 20% of the outstanding Common Stock of REA and the election of 20% of REA's Board of Directors by Greyhound will give Greyhound control or the power to control REA. Greyhound will not have such control or power to control, for at least the following reasons:

First, the 20% interest to be acquired by Greyhound is, of course, a minority interest which in and by itself will not permit control or the power to control.

Secondly, the By-laws of REA, as amended, provide [fol. 41] that 18 out of the 25 directors of REA are to be nominated by the railroad stockholders and that only 20% of the directors (or five of the 25 directors) may be nominated by Greyhound. The other two directors are nominated by management.

In that connection, the history of REA must be remembered. During the existence of REA it has been controlled by common carriers by rail who have owned all the stock of REA and, through the Standard Express Operations Agreement, supplied REA with rail transport and shared in REA's profits and losses. The acquisition of stock and representation on the Board by a non-railroad stockholder —the first such stockholder in the history of REA—will not change the fact of railroad control.

In addition, the remaining stock of REA will not be completely scattered amongst small shareholders. As shown by the enclosed stockholders' list, there are only 60 stockholders of REA, all of which are railroad stockholders and some of which hold substantial interests.

It is also important to realize that representation on REA's Board is allotted by REA's charter and By-laws to three railroad districts as follows: the Eastern District (which holds 1,085,748 shares of REA) with the right to nominate 7 directors, the Western District (which holds 633,180 shares of REA) with the right to nominate 6 directors and the Southern District (which holds 280,260 shares of REA) with the right to nominate 5 directors. The railroad stockholders of REA are thus consolidated for voting purposes into three blocs for election of the Board, each of which blocs alone has the right to nominate at least as many directors as Greyhound under the By-laws. It is also important to remember that such method of electing directors to the Board of REA may not be changed without the vote of two-thirds of the stock issued and outstanding.

In summary, therefore, it seems clear that the acquisition by Greyhound of 20% of the stock of REA will give to Greyhound a 20% investment in REA and nothing more. Greyhound will not achieve the power to elect more than 20% of the Board of REA and will not be able to compel changes in the Standard Express Operations Agreement or in the charter or By-laws of REA or in REA's methods of operations. In no practical sense, therefore, could Greyhound be said to control or have the power to control REA. The question of whether or not control exists following purchase of capital stock is an issue of fact to be determined, not by artificial tests, but by the special circum-[fol. 42] stances in each case. Such control or power to control must be real and not based on conjecture or remote possibilities. Not only is the power to control not real in this case, but we believe it is also not even remotely possible.

If the Commission desires any further information or documentation, REA will be glad to supply the same.

Very truly yours,

Railway Express Agency, Incorporated, by William B. Johnson, President.

CAPITAL IMPROVEMENT PROGRAM

Expenditures January 1, 1960 - August 20, 1964

Terminals	Land Acct. 201	Acct. 202	Building Acct. 203	Acct. 204	Equipment Acct. 210	Total
Brentwood, N.Y.	$ 15,217	$ 93,880			$ 2,815	$ 111,912
Kalamazoo, Mich.	9,409	91,988			2,278	103,675
Philadelphia, Pa. (garage)	372,643	227,543			27,098	627,284
Riverhead, N.Y.	3,080	35,152			1,312	39,544
Syracuse, N.Y.	89,963	243,432			15,031	348,426
Atlanta, Ga.			$ 70,500			70,500
Evanston, Ill.	140,630	172,398				313,028
Oakland, Calif.			460,527		93,417	553,944
San Francisco, Calif.	513,337	1,022,316			29,188	1,564,841
San Carlos, Calif.	168,513	97,236			1,566	267,315
San Jose, Calif.	(Alterations)	4,390				4,390
Ardsley, N.Y.	349,763	289,411			21,946	661,120
Lakeland, Fla.			38,972		1,224	40,196
Chicago, Ill. (CB&Q Freight House)				$250,459		250,459
Clifton, N.J.	107,789	520,696			28,098	656,583
Houston, Tex.	103,330	256,588			12,497	372,415
New Orleans, La.			37,707			37,707
Kenosha-Racine Wis.	12,242	74,812				87,054
Sarasota, Fla.	10,810	54,816			2,021	67,647
Montgomery, Ala.			45,302		466	45,768
Pittsburgh, Pa.				356,768	318,978	675,746
Harrisburg, Pa.	169,687	446,714			52,683	669,084
New Haven, Conn	351,146	159,540			79,608	590,294
New London, Conn.	17,281	111,024			1,500	129,805
Stamford, Conn.	86,075	188,514			1,300	275,889
Danbury, Conn.	19,799	133,611			3,061	156,471
Manchester, N. H.	34,050	4,409				38,459
Akron, Ohio				42,551	13,350	55,901
Elmira, N.Y.	15,957	95,081			6,076	117,114
Hartford, Conn.	130,367	354,948			15,484	500,799

Terminals	Land Acct. 201	Acct. 202	Building Acct. 203	Acct. 204	Equipment Acct. 210	Total
Hornell, N. Y.	$ 4 941	$ 67 106	$	$	$ 2 762	$ 74 809
Olean, N. Y.	10 514	76 868			3 579	90 961
Morristown, N. J.	44 732	112 133			7 419	164 284
Scranton, Pa.	5 548	228 110			21 086	254 744
Middletown, N. Y.	5 927	97 765			3 022	106 714
Suffern-Nyack, N. Y.	50 326	110 907			3 248	164 481
Binghamton, N. Y.	17 679	243 999			12 527	274 205
Youngstown, Ohio					1 741	1 741
Baltimore, Md.				19 175	1 959	21 134
St. Petersburg, Fla.	36 209	99 453			300	135 962
Worcester, Mass.	39 335	212 375			8 905	260 615
Charlotte, N. C.			273 272		22 690	295 962
Philadelphia, Pa.				147 609	271 874	419 483
Lombard, Ill.	54 172	160 509			5 339	220 020
Chicago, Ill. (NWXT)					231 854	231 854
Atlanta, Ga. (Airport)			30 028		10 961	40 989
Green Bay, Wisc.			31 050		506	31 556
Garden City, L.I., N.Y.	175 400	389 072			36 674	601 146
Waukegan, Ill.	15 225	78 622				93 847
Rochester, N. Y.			69 957		3 729	73 686
Trenton, N. J.		32 328			27 902	60 230
Grand Rapids, Mich.	31 574	122 893			3 981	158 448
Owatonna, Minn.	5 042	31 800				36 842
Glens Falls, N. Y.	17 489	47 622			1 504	66 615
Janesville, Wisc.	3 500	62 042			1 783	67 325
Sioux City, Iowa			72 250		2 307	74 557
Bedford, Ohio	27 023	52 044			2 058	81 125
Santa Ana, Calif.	50 512	100 311			2 368	153 191
Allentown, Pa.	27 366	182 281			14 636	224 283
Doylestown, Pa.	16 406	91 515			5 457	113 378

Terminals	Land Acct. 201	Land Acct. 202	Building Acct. 203	Acct. 204	Equipment Acct. 210	Total
Norristown, Pa.	$ 37,025	$ 119,043			$ 5,901	$ 161,969
Pottsville, Pa.	31,979	96,190			5,315	133,484
Reading, Pa.	57,775	106,865			5,810	170,450
Norfolk, Va.			$ 241,732		19,435	261,167
Chicago, Ill. (QXT)				$ 4,512	217,571	222,083
Nashville, Tenn.			234,924		28,820	263,744
New Haven, Conn. (garage)		82,339				82,339
Wilmington, N. C.			54,708		1,055	55,763
Buffalo, N. Y.				150,397	29,785	180,182
Baltimore, Md.				7,150	47,816	54,966
Hammond, Ind.	21,605	161,445			9,974	193,024
Englewood, N. J.	87,375	271,405			13,045	371,825
Cincinnati, Ohio				91,466	242,405	333,871
Washington, D. C.					23,036	23,036
Springfield, Ill.	14,610	53,006			539	68,155
Long Island City, N.Y.				104,995		104,995
Atlanta, Ga.				71,055	5,697	76,752
Phoenix, Ariz.				85,149	4,124	89,273
Oshkosh, Wis.	2,388	226				2,614
Zanesville, Ohio	19,000	5,491				24,491
Kansas City, Mo.				7,675		7,675
Portland, Me.	11,081					11,081
Highland, N. Y.	1,000					1,000
Bangor, Me.	5,125	378				5,503
Cincinnati, Ohio				9,939		9,939
TOTAL	$3,648,971	$8,174,642	$1,660,929	$1,348,900	$2,103,496	$16,936,938

(23rd EDITION)

STOCKHOLDERS OF RAILWAY EXPRESS AGENCY, INCORPORATED

Eastern District

		Shares
Baltimore and Ohio Railroad Company (The)		85,116
Bangor and Aroostook Railroad Company		2,076
Boston and Maine Railroad		47,748
Canadian National Realties, Limited, in trust		12,456
Central Railroad Company of New Jersey (The)		22,836
Chesapeake and Ohio Railway Company (The)		35,292
Chicago & Eastern Illinois Railroad Company		10,380
Delaware and Hudson Railroad Corporation (The)		10,380
Erie-Lackawanna Railroad Company		76,812
Lehigh Valley Railroad Company		20,760
Maine Central Railroad Company		10,380
Monon Railroad		6,228
New Jersey and New York Railroad Company (The)		2,076
New York Central Railroad Company (The)	199,296	
Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The)	31,140	
Michigan Central Railroad Company (The)	64,356	
		294,792
New York, Chicago and St. Louis Railroad Company (The)		8,304
New York, New Haven and Hartford Railroad Company (The)		91,344
Norfolk and Western Railway Company		20,760
Pennsylvania Railroad Company (The)		261,576
Reading Company		24,912
Richmond, Fredericksburg & Potomac Railroad Company		14,532
Wabash Railroad Company		24,912
Western Maryland Railway Company		2,076
		1,085,748

Southern District

Atlantic Coast Line Railroad Company		41,520
Central of Georgia Railway Company		12,456
Clinchfield Railroad Company		2,076
Florida East Coast Railway Company		12,456
Gulf, Mobile and Ohio Railroad Company		12,456
Illinois Central Railroad Company		60,204
Louisville and Nashville Railroad Company		49,824
Norfolk Southern Railway Company		2,076
Seaboard Air Line Railroad Company		35,292
Southern Railway Company	39,444	
Alabama Great Southern Railroad Company (The)	4,152	
Cincinnati, New Orleans and Texas Pacific Railway Company (The)	6,228	
		49,824
Western Railway of Alabama (The)		2,076
		280,260

Western District

	Shares
Atchison, Topeka and Santa Fe Railway Company (The)	95,496
Burlington-Rock Island Railroad Company	-,076
Chicago, Burlington & Quincy Railroad Company	56,052
Chicago Great Western Railway Company	8,304
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	53,976
Chicago, Rock Island and Pacific Railroad Company	45,672
Colorado and Southern Railway Company (The)	6,228
Denver and Rio Grande Western Railroad Company (The)	12,456
Great Northern Railway Company	31,140
Kansas City Southern Railway Company (The)	6,228
Lake Superior & Ishpeming Railroad Company	2,076
Missouri-Kansas-Texas Railroad Company	24,912
Missouri Pacific Railroad Company	41,520
Northern Pacific Railway Company	24,912
St. Louis-San Francisco Railway Company	29,064
St. Louis Southwestern Railway Company 4,152	
St. Louis Southwestern Railway Company of Texas 4.152	8,304
Soo Line Railroad Company	14,532
Southern Pacific Company	95,496
Spokane, Portland and Seattle Railway Company	2,076
Texas and Pacific Railway Company (The)	16,608
Union Pacific Railroad Company	51,900
Western Pacific Railroad Company (The)	4,152
	633,180

[fol. 47]

[fol. 48]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

F. D. No. 23324

Application of RAILWAY EXPRESS AGENCY Under Sections 20a and 214 for Authority to Issue Securities

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PETITION OF FREIGHT FORWARDERS INSTITUTE FOR RIGHT TO INTERVENE AND FOR A FORMAL HEARING IN THE MATTER —Filed October 20, 1964

[fol. 49] Comes now Freight Forwarders Institute[1] to state that it has a vital interest in the subject matter involved in the above-entitled proceeding; that it desires to intervene therein and to be heard and considered in all respects as a party thereto; and to request that formal hearing be set at which all of the facts may be elicited for the consideration of the Commission. As grounds for such petition it is respectfully shown:

I

The proposal here is to issue 500,000 shares of authorized but unissued stock in REA and to sell such shares to The

[1] Petitioner, the Freight Forwarders Institute is a voluntary nonprofit association of freight forwarders with offices at Room 401 Continental Bldg., Washington, D.C. All of petitioner's members are freight forwarders operating pursuant to permits issued under part IV of the Interstate Commerce Act. One of the purposes of the Institute is to protect, promote, foster, and advance the interests of the members, and to that end it is empowered to and does participate in administrative and judicial proceedings wherein issues involving freight forwarders are involved.

[File endorsement omitted]

[fol. 50] Greyhound Corporation for the sum of $10,000,000. The application shows that there are presently issued some 1,999,188 shares, owned by some 60 railroads; that issuance of the 500,000 shares contemplated by the application will bring the total outstanding shares to 2,499,188 (2,500,000) shares; that Greyhound will thus become owner of 20% of REA's outstanding stock and as such owner will appoint five members to the Board of Directors.

II

It is our contention, and it will be proved upon hearing, that despite REA's self-serving protestations to the contrary, this proposal is a mere launching pad for the lodgement in Greyhound of control of REA and it should be treated accordingly. Whether or not control is effectuated by this first step, and we think the facts will show that it is, the next step has already been charted.

REA in a supplemental pleading dated October 12, 1964, makes much of the facts that: Only the sale and ownership of 20 percent of the stock is contemplated; that ownership of the remaining 80 percent is in railroad hands; and that control of REA through ownership of stock is therefore out of the question.

This argument would be more convincing if we could assume (a) that stock ownership is the *only* means by which [fol. 51] the power to exercise control may manifest itself[2] and (b) that the railroad owners would continue to vote the remaining shares as a unit. Obviously, REA is in no position to insure such block voting on the part of the railroads.

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[2] A proposition which the Commission flatly rejected in *United States Freight Co.—Investigation of Control,* 45 M.C.C. 352, where it said at 358:

> Ownership or possession of a carrier's stock is only one of many means by which control of it may be exercised in violation of the statute.

III

At page 3 of REA's supplemental pleading this statement appears:

> In summary, therefore, it seems clear that the acquisition by Greyhound of 20% of the stock of REA will give to Greyhound a 20% investment in REA *and nothing more.* Greyhound will not achieve the power to elect more than 20% of the Board of REA *and will not be able to compel changes* in the Standard Express Operations Agreement or in the charter or By-Laws of REA *or in REA's methods of operation.*

Of what avail, then, is the objective expressed as follows on page 7 of the application:

> Applicant further believes that the issuance of 500,000 shares of applicant's common stock to Greyhound will give Greyhound a sufficient equity in the applicant *to provide a working basis* which will justify the *applicant and Greyhound* in going forward *with the study of,* and ultimately *entering into an agreement* with respect to the consolidation of certain operating functions and facilities with a view of effecting economies • • •. (Emphasis added).

[fol. 52] Would applicant have the Commission believe that this "working basis" and "study" are to be mere exercises in futility?

That such a result is not contemplated is made clear in paragraph (e) of page 2 of Exhibit 4 which is an agreement dated October 1, 1964, between REA and Greyhound which provides:

> The Greyhound shall offer to purchase up to 1,000,000 shares of the common stock of REA *from present shareholders* at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing

date of the transaction involving the 500,000 authorized but unissued shares of REA. (Emphasis added).

We are not lulled into any false sense of security by the fact that the present shareholders have first refusal on any outstanding stock offered for purchase. We have no way of knowing whether or not a promise or promises to work in concert with Greyhound to bring about the elimination of such right played an important part in motivating the purchase of the 500,000 shares. These are things which can be developed only upon a hearing.

IV

We must be forever conscious of the fact that the Commission gave tentative approval of the so-called Standard Operating Agreement of 1959, only from the standpoint of pooling. We respectfully submit that to approve a pooling arrangement as between REA as an *alter ego* of the railroads, and its proprietary lines, is far different from ap- [fol. 53] proval of a pooling arrangement as between the railroads, on the one hand, and an REA controlled[3] by Greyhound, on the other.

The impact of such an arrangement on the forwarding industry would be catastrophic. As the Commission well knows, REA is permitted to utilize the railroads as underlying carriers on an agreed basis which contemplates the return of out-of-pocket costs. By way of contrast, forwarders may utilize railroads only on the basis of their published tariff rates. To turn REA and Greyhound loose to conduct forwarding operations under such an imbalance of underlying costs would spell the end of the forwarding business, as we know it today.

It is no answer to say that REA, as *now* constituted, could not technically qualify as a freight forwarder under

[3] And when we speak of control here, we mean the power to exercise control.

the present statutory definition.[4] We are concerned with what a person does more than with mere nomenclature. The Commission must be aware of the fact that REA, beginning in the recent past, is departing more and more from its traditional role in the general scheme of transportation and is entering the domain of a hauler of general freight in volume lots[5] as distinguished from "express [fol. 54] matter." At page 4 of a shipping directory it issues for the information of the shipping public this statement appears in connection with reference to a certain tariff:

> Applies on a wide variety of commodities * * * (naming a number of specific items) and many other commodities providing for low competitive rates and charges which ordinarily are lower per individual shipment for aggregates beginning at 300, 1500, 2500, and 10,000 pounds, moving from one shipper to one or more consignees to one or more destinations. On some commodities there are rate columns for shipments aggregating 15,000 and 30,000 pounds.

There can be no question that when REA "consolidates" and "breaks bulk" on shipments totaling as much as 30,000 pounds, and uses railroads (or motor carriers) for underlying line-haul transportation it is functioning in the similitude of a freight forwarder and should be regulated accordingly.

The legal definition of a freight forwarder, as heretofore indicated, excludes carriers subject to Parts I, II, and III from its reach. But by virtue of what fact is REA subject to Part I? An express company is not defined in Part I,

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[4] This because Section 402(a)(5) provides that:

> The term "freight forwarder" means any person which (otherwise than as a carrier subject to Part I, II, or III of this Act) holds itself out * * *

and an "express agency" is subject to Parts I and II.

[5] Docket No. 33977—*Freight, All Kinds L.C.L., Container Charges—U.S.A.*, now pending, is a case in point.

and is not required to obtain authority from the Commission in order to operate. So long as REA is the *alter ego* of the railroads its regulation under Part I is not likely to be questioned, but if control passes to Greyhound the situation will be different. If REA abandons its traditional role as an express carrier, as we have shown that it is rapidly doing, and becomes a consolidator of general freight, compensating the railroads on a car-foot mile basis, and finally, ceases to be an exclusive instrumentality of [fol. 55] the railroads, we assert that it will cease to be a carrier subject to part I and will become a carrier subject to part IV of the Act. But before it can operate as a freight forwarder it will be necessary for REA to obtain a permit under part IV of the Act.

Conclusion

We respectfully submit that the broad and important issues raised by this application should not be resolved by the Commission on the bare facts and allegations set forth in the documents filed by REA. We respectfully request that the matter be set for hearing for the purpose of exploring fully the question of control of REA by Greyhound which is implicit in the application; the pooling arrangement approved in 1959 in the light of the changed circumstances and conditions which would prevail if the application is approved; and other questions raised by this petition.

Respectfully submitted,

Freight Forwarders Institute, By: Harry C. Ames, 527 Transportation Bldg., Washington, D.C., 20006; Giles Morrow, 1012 Fourteenth St., N.W., Washington, D. C., 20005.

Certificate of Service (omitted in printing).

[fol. 57] [File endorsement omitted]

[fol. 58]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

PETITION FOR LEAVE TO INTERVENE AND PROTEST OF SOUTHERN PACIFIC COMPANY—Filed October 20, 1964

Comes now petitioner and protestant, Southern Pacific Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding and to register its protest in opposition to the relief sought, and as grounds for said proposed intervention and protest, states as follows:

I.

Petitioner and protestant is a corporation created and existing under and by virtue of the laws of the State of Delaware and is a common carrier by railroad subject to the Interstate Commerce Act. Applicant, Railway Express Agency, Incorporated, (hereinafter referred to as REA), is authorized to issue 2,576,000 shares of common stock. Applicant, REA, now has issued and outstanding 1,999,188 shares of said common stock. Petitioner and protestant presently owns 95,496 shares of the common stock of applicant, REA.

[fol. 59]

II.

Applicant, REA, seeks authority to issue 500,000 shares of authorized but unissued stock to The Greyhound Corporation. As disclosed by the application on file herein, The Greyhound Corporation will also have the right to purchase up to 1,000,000 shares of the common stock of REA from present shareholders at a price of $20.00 per share, cash.

III.

Petitioner and protestant alleges that the issuance of 500,000 shares of stock to The Greyhound Corporation by the REA is not for a lawful object within its corporate purposes and is not compatible with the public interest, and is not necessary or appropriate for or consistent with the proper performance by REA of service to the public as a common carrier and that such issuance will impair its ability to perform that service. Petitioner and protestant also alleges that such issuance is not reasonably necessary and appropriate for such purpose.

IV.

Petitioner and protestant believes and upon such ground alleges that the relief sought in the application on file is an attempt to consummate control of REA by The Greyhound Corporation without Section 5 approval and authority from this Commission. Petitioner and protestant expects to file a formal complaint making such allegations and asking for consolidation of that proceeding with the instant proceeding.

[fol. 60] Wherefore said petitioner and protestant prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted. Petitioner and protestant further prays that a hearing be held in this matter to determine whether the statutory requirements of Section 20a(2) are met, and further prays that because of the matters alleged and the matters that will be developed at the hearing, when held, that the Commission refuse to grant Railway Express Agency, Incorporated, authority to issue to The Greyhound Corporation the 500,000 shares of au-

thorized but unissued stock and refuse to grant any other or different authority in the premises.

Respectfully submitted,

Southern Pacific Company, By B. F. Biaggini, Executive Vice-President.

Dated this 20th day of October, 1964.

Correspondence with respect to this Petition and Protest should be addressed to:

Mr. Charles W. Burkett, General Solicitor, Southern Pacific Company, 65 Market Street, San Francisco, California 94105.

(Seal)

[fol. 61] *Duly sworn to by B. F. Biaggini, jurat omitted in printing.*

[fol. 62] Certificate of Service (omitted in printing).

[fol. 63]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AND PROTEST OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY—Filed October 22, 1964

Comes now petitioner and protestant, The Denver and Rio Grande Western Railroad Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding and to register its protest in opposition to the relief sought, and as grounds for said proposed intervention and protest, states as follows:

[File endorsement omitted]

I.

Petitioner and protestant is a corporation created and existing under and by virtue of the laws of the State of Delaware and is a common carrier by railroad subject to the Interstate Commerce Act. Applicant, Railway Express Agency, Incorporated, (hereinafter referred to as REA), is authorized to issue 2,576,000 shares of common stock. Applicant, REA, now has issued and outstanding 1,999,188 shares of said common stock. Petitioner and protestant presently owns 12,456 shares of the common stock of applicant REA.

II.

Applicant, REA, seeks authority to issue 500,000 shares [fol. 64] of authorized but unissued stock to The Greyhound Corporation. As disclosed by the application on file herein, The Greyhound Corporation will also have the right to purchase up to 1,000,000 shares of the common stock of REA from present shareholders at a price of $20.00 per share, cash.

III.

Petitioner and protestant alleges that the issuance of 500,000 shares of stock to The Greyhound Corporation by the REA is not for a lawful object within its corporate purposes and is not compatible with the public interest, and is not necessary or appropriate for or consistent with the proper performance by REA of service to the public as a common carrier and that such issuance will impair its ability to perform that service. Petitioner and protestant also alleges that such issuance is not reasonably necessary and appropriate for such purpose.

IV.

Petitioner and protestant believes and upon such ground alleges that the relief sought in the application on file is an attempt to consummate control of REA by The Grey-

hound Corporation without Section 5 approval and authority from this Commission. Petitioner and protestant expects to file a formal complaint making such allegations and asking for consolidation of that proceeding with the instant proceeding.

Wherefore said petitioner and protestant prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, [fol. 65] produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted. Petitioner and protestant further prays that a hearing be held in this matter to determine whether the statutory requirements of Section 20a(2) are met, and further prays that because of the matters alleged and the matters that will be developed at the hearing, when held, that the Commission refuse to grant Railway Express Agency, Incorporated, authority to issue to The Greyhound Corporation the 500,000 shares of authorized but unissued stock and refuse to grant any other or different authority in the premises.

Respectfully submitted,

The Denver and Rio Grande Western Railroad Company, By R. K. Bradford, Senior Vice President.

Dated this 20th day of October, 1964.

Correspondence with respect to this Petition and Protest should be addressed to:

Mr. T. A. White, General Solicitor, The Denver and Rio Grande Western Railroad Company, P. O. Box 5482, Denver, Colorado 80217.

[fol. 66] *Duly sworn to by R. K. Bradford, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 67]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION OF TRANSCONTINENTAL BUS SYSTEM, INC., ET AL. SEEKING LEAVE TO INTERVENE—Filed October 22, 1964

[fol. 68] Now come Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, Petitioners herein, and for cause would show to the Commission as follows:

I.

Intervention is sought pursuant to Section 56.3(d) of Title 49 of the Code of Federal Regulations, and Peti-
[fol. 69] tioners' position is in opposition to the authority sought by Applicant.

Transcontinental Bus System, Inc., hereinafter referred to as Transcontinental, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-109780 and subs thereunder. Transcontinental is a Delaware corporation, with principal offices located at 315 Continental Avenue, Dallas, Dallas County, Texas.

[File endorsement omitted]

American Buslines, Inc., hereinafter referred to as American, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-2890 and subs thereunder. American is a Delaware corporation, with principal offices located at 1805 Leavenworth Street, Omaha, Nebraska.

Arkansas Motor Coaches, Ltd., Inc., hereinafter referred to as Arkansas, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-60026 and subs thereunder. Arkansas is an Arkansas corporation, with principal offices located at 106 East Markham, Little Rock, Arkansas.

Bayshore Buslines, Inc., hereinafter referred to as Bayshore, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by [fol. 70] the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-11929 and subs thereunder. Bayshore is a Texas corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Bus System, Inc., hereinafter referred to as Continental, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-107586 and subs thereunder. Continental is a Tennessee corporation, with principal offices located at 315 Continental Avenue, Dallas, Texas.

Continental Crescent Lines, Inc., hereinafter referred to as Crescent, is a common carrier of passengers, their bag-

gage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Public Convenience and Necessity, No. MC-114271 and subs thereunder. Crescent is a Delaware corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Panhandle Lines, Inc., hereinafter referred to as Panhandle, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-8742 and subs thereunder. Panhandle is a Texas corporation, with principal offices located at 400 Monroe Street, Amarillo, Texas.

Continental Southern Lines, Inc., hereinafter referred to as Southern, is a common carrier of passengers, their bag-
[fol. 71] gage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-29957 and subs thereunder. Southern is a Louisiana corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Tennessee Lines, Inc., hereinafter referred to as Tennessee, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-55312 and subs thereunder. Tennessee is a Delaware corporation, with principal offices located at 418 Fifth Avenue, South, Nashville, Tennessee.

Denver-Colorado Springs-Pueblo Motorway, hereinafter referred to as D.C.S.P., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in

Certificates of Convenience and Necessity, No. MC-28462 and subs thereunder. D.C.S.P. is a Colorado corporation, with principal offices located at 1669 Broadway, Denver, Colorado.

Denver-Salt Lake-Pacific Stages, Inc., hereinafter referred to as D.S.L.P., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-1097 and subs thereunder. D.S.L.P. is a Colorado corporation, with principal offices located at 1669 Broadway, Denver, Colorado.

[fol. 72] Continental Pacific Lines, Inc., hereinafter referred to as Pacific, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-89037 and subs thereunder. Pacific is a California corporation, with principal offices located at 1501 South Central Avenue, Los Angeles, California.

Midwest Buslines, Inc., hereinafter referred to as Midwest, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-61616 and subs thereunder. Midwest is a Delaware corporation, with principal offices located at 433 West Washington Avenue, North Little Rock, Arkansas.

Muscatine, Davenport and Clinton Bus Co., hereinafter referred to as M. D. & Co., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC 107562 and subs thereunder. M.D.&C is an Iowa corporation, with

principal offices located at 1805 Leavenworth Street, Omaha, Nebraska.

Smoky Mountain Stages, Inc., hereinafter referred to as Smoky, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-61598 and subs there- [fol. 73] under. Smoky is a North Carolina corporation, with principal offices located at 417 West Fifth Street, Charlotte, North Carolina.

Tennessee Trailways, Inc., hereinafter referred to as Tennessee Trailways, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-8500 and subs thereunder. Tennessee Trailways is a Virginia corporation, with principal offices located at 710 Sevier Avenue, Knoxville, Tennessee.

Union Bus Lines, Inc., hereinafter referred to as Union, is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-57298 and subs thereunder. Union is a Texas corporation, with principal offices located at 315 Continental Avenue, Dallas, Texas.

II.

Docket No. MC-F-23324, filed October 7, 1964, is the application of Railway Express Agency, Inc., for authority, under Sections 20a and 214 of the Interstate Commerce Act, to issue securities. Applicant proposes to issue 500,000 shares of its authorized but unissued shares of common stock to The Greyhound Corporation for a total price of $10,000,000.

The Greyhound Corporation is a holding company which [fol. 74] controls the largest motorbus company in the world, i.e. Greyhound Lines, Inc. (The Greyhound Corporation and Greyhound Lines, Inc. will hereinafter be referred to collectively as "Greyhound.") Railway Express Agency, Inc., (hereinafter referred to as "R.E.A.") is the world's largest express company.

Under this proposal Greyhound would acquire 20% of the stock of R.E.A., and this, in connection with other aspects of the application, present matters of grave concern to the Petitioners. The Applicant has stated in its application that the proposal will "provide a working basis" for R.E.A. and Greyhound "entering into an agreement with respect to, *the consolidation of certain operating functions and facilities* . . ." (Page 7 application. Emphasis added) No motorbus company could hope to meet the competition offered by a consolidation of the R.E.A. and Greyhound terminal facilities and operations. It would, in effect, destroy all competition in the package express phase of motorbus transportation, and would, therefore, not be compatible with the public interest.

The present stockholders of R.E.A. have a right of first refusal for the purchase of all newly issued shares of R.E.A. and it is to be assumed (although the Application does not so state) that the new shares sold to Greyhound would carry the same right. Once this stock is in the hands of Greyhound with right of first refusal on future stock to be issued, Greyhound's competitors (particularly Petitioners who constitute Greyhound's chief competition) are placed in a serious position of competitive jeopardy with [fol. 75] no possibility of being able to remedy the situation created by the amalgamation of Greyhound and R.E.A.

This application raises numerous issues relating to proper regulatory policy as related to the public interest; the maintenance of sound economic conditions in transportation and among the several carriers; the rendering of transportation service without unjust discriminations, undue preferences or advantages or unfair or destructive com-

petitive practices, and the preservation of the inherent advantages of the several modes of transportation. They are here presented within the context of this application as a matter of first instance. As presented these matters are sui generis since such an amalgamation by a bus company and an express company has never been attempted under the Interstate Commerce Act.

Petitioners allege that the issuance of these shares by R.E.A. to be sold to Greyhound is not in the public interest and is neither necessary nor appropriate for, or consistent with the proper performances by R.E.A. of service to the public as a common carrier.

III.

Petitioners respectfully submit that the averments contained herein are pertinent to the issues to be presented by Applicant and do not unduly broaden said issues.

Petitioners further submit that the public interest demands that an oral hearing be held on this application and Petitioners request that the application be set for oral hearing. Such hearing is required in order that Petitioners may cross-examine witnesses of the Applicant and in order that they may properly present evidence in rebuttal of Applicant's evidence.

[fol. 76] Wherefore, Petitioners pray that the Commission permit them to intervene in and become a party to this proceeding, and that their request for oral hearing be granted.

Respectfully submitted,

Transcontinental Bus System, Inc. et al., By: Carl B. Callaway, Warren A. Goff, D. Paul Stafford, 315 Continental Avenue, Dallas, Texas, Their Attorneys.

Certificate of Service (omitted in printing).

[fol. 77] [File endorsement omitted]

[fol. 78]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 3324

[Title omitted]

JOINT PETITION FOR LEAVE TO INTERVENE AND PROTEST AND REQUEST FOR ORAL HEARING OF NATIONAL TRAILWAYS BUS SYSTEM—Filed October 22, 1964

Comes now National Trailways Bus System and respectfully petitions the Commission for leave to intervene in the above-entitled proceeding. Simultaneously, National Trailways Bus System requests acceptance for filing of this its protest to the approval of said application and further petitions the Commission to assign the proceeding for an oral hearing.

I.

National Trailways Bus System is an association of approximately forty-one member companies who are engaged in the transportation of passengers and their baggage, and *express,* mail and newspapers in interstate or foreign commerce. The operations of these companies extend throughout the United States from coast to coast and border to border. The primary purpose and function of National Trailways Bus System is to provide more effective competition to The Greyhound Corporation in the transportation not only of passengers, but also in the transportation of express. The Commission has, on numerous occasions over the last 25 years, recognized in its formal reports the position of National Trailways Bus System as a competitor [fol. 79] to The Greyhound Corporation and, in the interest of brevity, those findings and conclusions will not be referred to in detail herein.

II.

The member carriers of National Trailways Bus System consider the transportation of express throughout the United States as a vital and indispensable source of revenue. In many instances, the transportation of express by these member carriers will provide the difference between a profit and a loss in the over all transportation activities of these carriers. In those instances, therefore, it is imperative that the express traffic which these carriers are now handling be continued or otherwise substantial deficits will surely result thereby impairing the ability of many member carriers to continue serving the public.

III.

The Greyhound Corporation is the only fully integrated nationwide common carrier of passengers. Its dominance in the field of motor bus transportation has long been recognized. It already enjoys a substantial and marked advantage in the transportation of passengers and express over other motor bus operators in the United States by reason of its single ownership, which thereby permits it to route traffic to its own advantage and to, in effect, freeze out carriers outside of The Greyhound Corporation if it so desires.

The Greyhound Corporation now proposes to strengthen and extend its dominance in the filed of motor bus operations by the ultimate acquisition of Railway Express [fol. 80] Agency, Incorporated, which would give it a virtual and absolute monopoly in the field of express transportation. It is the position of National Trailways Bus System that such acquisition in whole or in part by The Greyhound Corporation of the operating rights and properties of Railway Express Agency, Inc., would result in destructive competition; would create a monopoly in The Greyhound Corporation contrary to the public interest and would result in the destruction or substantial impairment of the ability of many carriers outside of The Greyhound

Corporation, including those carriers members of National Trailways Bus System, to continue serving the public.

IV.

It would appear that The Greyhound Corporation now proposes to acquire approximately 20% of the outstanding common capital stock of Railway Express Agency, Incorporated. Under these circumstances, serious question may arise as to whether The Greyhound Corporation would in fact acquire control of Railway Express Agency, Incorporated, or whether Railway Express Agency, Incorporated, would be operated in a common interest and for the benefit of The Greyhound Corporation. The Commission has held in a long series of cases that the mere holding of a minority interest does not necessarily mean that control or operation in a common interest has not thereby been effectuated. Only by an oral hearing can the full circumstances and details regarding the possibility of control or operation in a common interest be determined.

[fol. 81] Wherefore, National Trailways Bus System respectfully urges the Commission to approve this petition for the purposes indicated in the opening paragraph hereof.

Respectfully submitted,

Wilson, Woods & Villalon, James E. Wilson, 716 Perpetual Building, 1111 E Street, N. W., Washington 4, D. C., General Counsel for National Trailways Bus System.

Date: October 22, 1964.

Certificate of Service (omitted in printing).

[fol. 82]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AND PROTEST OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Filed October 22, 1964

Comes now petitioner and protestant, The Atchison, Topeka and Santa Re Railway Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding and to register its protest in opposition to the relief sought, and as grounds for said proposed intervention and protest, states as follows:

I.

Petitioner and protestant is a corporation created and existing under and by virtue of the laws of the State of [fol. 83] Kansas and is a common carrier by railroad subject to the Interstate Commerce Act. Applicant, Railway Express Agency, Incorporated (hereinafter referred to as REA) is authorized to issue 2,576,000 shares of common stock. Applicant, REA, now has issued and outstanding 1,999,188 shares of said common stock. Petitioner and protestant presently owns 95,496 shares of the common stock of applicant, REA.

II.

Applicant, REA, seeks authority to issue 500,000 shares of authorized but unissued stock to The Greyhound Corporation. As disclosed by the application on file herein, The Greyhound Corporation will also have the right to purchase up to 1,000,000 shares of the common stock of

[File endorsement omitted]

REA from present shareholders at a price of $20.00 per share, cash.

III.

Petitioner and protestant alleges that the issuance of 500,000 shares of stock to The Greyhound Corporation by the REA is not for a lawful object within its corporate purposes and is not compatible with the public interest, and is not necessary or appropriate for or consistent with the proper performance by REA of service to the public [fol. 84] as a common carrier and that such issuance will impair its ability to perform that service. Petitioner and protestant also alleges that such issuance is not reasonably necessary and appropriate for such purpose.

Wherefore, said petitioner and protestant prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted. Petitioner and protestant further prays that a hearing be held in this matter to determine whether the statutory requirements of Section 20a(2) are met, and further prays that because of the matters alleged and the matters that will be developed at the hearing, when held, that the Commission refuse to grant Railway Express Agency, Incorporated, authority to issue to The [fol. 85] Greyhound Corporation the 500,000 shares of authorized but unissued stock and refuse to grant any other or different authority.

Respectfully submitted,

The Atchison, Topeka and Santa Fe Railway Company, By R. D. Shelton, Vice President—Operations.

Dated October 21, 1964.

Correspondence with respect to this Petition and Protest should be addressed to:

Starr Thomas, General Counsel, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Blvd., Chicago, Illinois 60604.

[fol. 86] *Duly sworn to by R. D. Shelton, jurat omitted in printing.*

[fol. 87] Certificate of Service (omitted in printing).

[fol. 88] [File endorsement omitted]

[fol. 89]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Docket No. MC-F-23324

[Title omitted]

PETITION OF TRANSCONTINENTAL BUS SYSTEM, INC., ET AL. TO REQUIRE FILING UNDER SECTION 5, INTERSTATE COMMERCE ACT, AND TO CONSOLIDATE—Filed December 2, 1964

Now come Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Inc., Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, Petitioners herein, and for cause would show to the Commission as follows:

I.

This is the application of Railway Express Agency, Inc. (hereinafter referred to as "R.E.A.") for authority, under

[fol. 90] Sections 20a and 214 of the Interstate Commerce Act, to issue securities. Applicant proposes to issue 500,000 shares of its authorized but unissued shares of common stock to The Greyhound Corporation (hereinafter referred to as "Greyhound") for a total price of $10,000,000.

The Petitioners herein are filing simultaneously with this Petition, a Petition Seeking Leave to Intervene. The dates of incorporation, address and Interstate Commerce Commission authority of Petitioners is fully described in the Petition Seeking Leave to Intervene, and will not be reiterated here for the sake of brevity.

II.

Petitioners move that R.E.A. and Greyhound be required to further file in connection with this transaction an application under Section 5 of the Interstate Commerce Act, to be considered in conjunction with its Application for Authority to Issue Securities under Sections 20a and 214 of said Act.

The major policy and fact issues that should be considered before this Commission permits Greyhound to consolidate facilities and operations with R.E.A. are many and varied, and cannot properly be presented in a hearing governed by the issues pertinent to Sections 20a and 214 of the Act.

The acquisition by Greyhound of 20% of R.E.A. common stock would not normally be considered as control, but, such acquisition does present a serious question, to-wit: "Whether Greyhound should be allowed to consolidate its facilities and operations with those of R.E.A." A proper determination of this question will require the presentation [fol. 91] and consideration of broad issues—issues pertaining to the National Transportation Policy. The issues pertinent under Sections 20a and 214 are limited and narrow and are insufficient for this purpose.

It may be fairly stated that this is a petition to broaden the issues which applicant chooses to raise at this time, but it does not broaden the issues which the Commission should require to be raised under the Act. Petitioners submit that

the issues they seek to raise are vitally important and pertinent in light of the declared National Transportation Policy. If R.E.A. and Greyhound be required to file an application under Section 5 of the Interstate Commerce Act, such broad policy questions and issues may properly be presented and considered in reaching a proper determination of these questions and issues. Unlike Sections 20a and 214, Section 5 does allow, and in fact makes specific provision for, the presentation of the issues necessary for a determination of the question as to whether or not Greyhound should be allowed to consolidate its facilities and operations with those of R.E.A.

III.

Petitioners have requested, in their Petition Seeking Leave to Intervene, an oral hearing so that they may properly cross-examine witnesses of the Applicant, and in order to properly present evidence in rebuttal of Applicants' evidence. Petitioners now reaffirm this request for oral hearing, and further request that the Application for Authority to Issue Securities and the application under Section 5, if [fol. 92] this Petition be granted and such application required, be consolidated and heard on a common record. Such consolidation will expedite the proceedings to the benefit of all parties.

Wherefore, Petitioners pray that Applicant be required by Order of the Commission to file an application under Section 5 of the Interstate Commerce Act; that such application be consolidated and heard on a common record with Applicants' pending Application for Authority to Issue Securities; and that their request for oral hearing be granted.

Respectfully submitted,

Transcontinental Bus System, Inc., et al., By: Carl B. Callaway, Warren A. Goff, D. Paul Stafford, 315 Continental Avenue, Dallas, Texas 75207, Their Attorneys.

Certificate of Service (omitted in printing).

[fol. 93] [File endorsement omitted]

[fol. 94]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

JOINT PETITION FOR LEAVE TO INTERVENE, AND PROTEST, OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS—Filed October 28, 1964

Come now petitioners and protestants, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, and jointly represent that they have an interest in the matters in controversy in this proceeding; that they hereby protest the granting of the authority sought by applicant herein; that they desire to intervene in and become parties to said proceeding in opposition to the relief sought; and as grounds for such intervention and protest, respectfully state:

I.

St. Louis Southwestern Railway Company is a corporation organized and existing under the laws of the State of Missouri and is a common carrier by railroad subject to the Interstate Commerce Act. St. Louis Southwestern Railway Company of Texas is a corporation organized and existing under the laws of the State of Texas and is a common carrier by railroad subject to the Interstate Commerce Act. St. Louis Southwestern Railway Company owns or operates property situated in the States of Illinois, Missouri, Arkansas, Tennessee, Louisiana and Texas. St. Louis Southwestern Railway Company of Texas, all of whose [fol. 95] property is situated in the State of Texas, is a

wholly-owned subsidiary of St. Louis Southwestern Railway Company, which operates such property under a lease approved by this Commission.

II.

Each of the petitioners and protestants, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, owns 4,152 shares of the outstanding common capital stock of applicant, Railway Express Agency, Incorporated (hereinafter referred to as REA). REA is authorized to issue 2,576,000 shares of common stock and presently has issued and outstanding a total of 1,999,188 shares of its authorized common stock.

III.

By the application filed herein, REA seeks authority under Sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of its authorized but unissued common capital stock to The Greyhound Corporation. The application further discloses that The Greyhound Corporation also would have the right to purchase up to 1,000,000 shares of the common stock of REA from present stockholders at a cash price of $20.00 per share.

IV.

Petitioners and protestants believe and upon such ground allege that the proposed issue of 500,000 shares of common stock to The Greyhound Corporation by REA is not for a lawful object within its corporate purposes; is not compatible with the public interest; is not necessary or appropriate for or consistent with the proper performance by REA of service to the public as a common carrier and will [fol. 96] impair its ability to perform that service; is not reasonably necessary and appropriate for such purpose; and that seeking approval of the transaction proposed by the application filed in this docket is an attempt to effect control of REA by The Greyhound Corporation without

obtaining approval and authorization therefor from the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act.

Wherefore, these petitioners and protestants respectfully pray (1) that they be granted leave to intervene and be treated as parties protestant hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted; and (2) that a hearing be held in this proceeding to determine whether the requirements of Section 20a will be met, and, pending such hearing, the Commission withhold granting the authority sought by applicant in this proceeding or any other or different authority in the premises.

Respectfully submitted,

St. Louis Southwestern Railway Company, By H. J. McKenzie, President.

St. Louis Southwestern Railway Company of Texas, By H. J. McKenzie, President.

Dated this 23rd day of October, 1964.

[fol. 97] *Duly sworn to by H. J. McKenzie, jurat omitted in printing.*

[fol. 98] Certificate of Service (omitted in printing).

[fol. 99]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AND PROTEST OF THE MISSOURI PACIFIC RAILROAD—Filed November 2, 1964

Comes now petitioner and protestant, The Missouri Pacific Railroad Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding and to register its protest in opposition to the relief sought, and as grounds for said proposed intervention and protest, states as follows:

I.

Petitioner and protestant is a corporation created and existing under and by virtue of the laws of the State of Missouri and is a common carrier by railroad subject to the Interstate Commerce Act. Applicant, Railway Express [fol. 100] Agency, Incorporated (hereinafter referred to as REA) is authorized to issue 2,576,000 shares of common stock. Applicant, REA, now has issued an outstanding 1,999,188 shares of said common stock. Petitioner and protestant presently directly owns 41,520 shares of the common stock of applicant, REA, and indirectly, through its subsidiary The Texas and Pacific Railway Company, owns an additional 16,608 of such shares.

II.

Applicant, REA, seeks authority to issue 500,000 shares of authorized but unissued stock to The Greyhound Corporation. As disclosed by the application on file herein, The

Greyhound Corporation will also have the right to purchase up to 1,000,000 shares of the common stock of REA from present shareholders at a price of $20.00 per share, cash.

III.

Petitioner and protestant alleges that the issuance of 500,000 shares of stock to The Greyhound Corporation by the REA is not for a lawful object within its corporate purposes and is not compatible with the public interest, and is not necessary or appropriate for or consistent with the proper performance by REA of service to the public as a common carrier and that such issuance will impair its ability to perform that service. Petitioner and protestant also alleges that such issuance is not reasonably necessary and appropriate for such purpose.

[fol. 101] Wherefore, said petitioner and protestant prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted. Petitioner and protestant further prays that a hearing be held in this matter to determine whether the statutory requirements of Section 20a (2) are met, and further prays that because of the matters alleged and the matters that will be developed at the hearing, when held, that the Commission refuse to grant Railway Express Agency, Incorporated, authority to issue to The Greyhound Corporation the 500,000 shares of authorized but unissued stock and refuse to grant any other or different authority.

Respectfully submitted,

Missouri Pacific Railroad Company, By D. B. Jenks, President.

Dated October 30, 1964

Correspondence with respect to this Petition and Protest should be addressed to:

Mark M. Hennelly
Vice President and General Counsel
Missouri Pacific Railroad Company
2003 Missouri Pacific Building
St. Louis 3, Missouri

[fol. 102] *Duly sworn to by D. B. Jenks, jurat omitted in printing.*

[fol. 103] Certificate of Service (omitted in printing).

[fol. 104]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION OF THE GREYHOUND CORPORATION FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPLICATION—Filed November 9, 1964

Comes now petitioner The Greyhound Corporation (hereinafter called "Greyhound") and respectfully represents that it has an interest in the above-entitled proceeding and requests that it be granted leave to intervene in support of applicant and to become a party to said proceeding. As grounds for said proposed intervention, petitioner states as follows:

1. Petitioner is a corporation organized and existing under and by virtue of the laws of the State of Delaware. While petitioner is not a carrier under the Interstate Commerce Act, it has been determined to be subject to certain provisions of that Act. (See Commission Opinion and Order dated October 25, 1963, in Docket No. MC-F-8531.) Peti-

[File endorsement omitted]

tioner owns all of the stock of Greyhound Lines, Inc., a motor carrier of passengers and express subject to the Interstate Commerce Act.

[fol. 105] 2. The application in the above-entitled proceeding seeks authority from this Commission for Railway Express Agency, Incorporated (hereinafter called "R E A") to issue 500,000 shares of its common stock to Greyhound at a price of $20 per share or a total of $10 million. The issuance of such shares to Greyhound would give it a 20% interest in R E A and would enable it to elect 20% of the Board of Directors of R E A.

3. Petitions for leave to intervene in this proceeding have been filed by or on behalf of certain rail carriers, bus carriers, freight forwarders, and truck carriers. All of these petitions seek to create the erroneous impression that this proceeding involves an issue of control of R E A by Greyhound. Greyhound offered to acquire control of R E A but was unsuccessful, as the petitioning rail carriers well know. The railroad stockholders of R E A approved an offer of a 20% interest only and because of the right of first refusal of said railroad stockholders as to all presently outstanding shares of R E A, it is unlikely that Greyhound will acquire any more than said 20% interest in the future. In the event that Greyhound should subsequently acquire any additional stock interest which would even approach a position of control, Greyhound would file an appropriate application under Section 5 of the Interstate Commerce Act.

[fol. 106] Wherefore, this petitioner prays leave to intervene and to be treated as a party hereto with right to have notice of all further proceedings and to participate therein, and further prays that since no issue of control is involved in this proceeding, this Commission grant the application of R E A without hearing.

Dated at San Francisco, California, this 6th day of November, 1964.

Respectfully submitted,

The Greyhound Corporation, By Gerald H. Trautman, Vice President.

Robert J. Bernard, The Greyhound Corporation, 140 South Dearborn Street, Chicago, Illinois 60603;

Gerald H. Trautman, The Greyhound Corporation, 601 California Street, San Francisco, California 94108;

Attorneys for Petitioner, The Greyhound Corporation.

[fol. 107] *Duly sworn to by Gerald H. Trautman, jurat omitted in printing.*

[fol. 108] Certificate of Service (omitted in printing).

[fol. 109] [File endorsement omitted]

[fol. 110]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION OF THE UNITED STATES DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE, FOR CONSOLIDATION OF THIS PROCEEDING WITH A PROCEEDING TO DETERMINE THE LAWFULNESS OF THE PROPOSED TRANSACTION UNDER SECTION 7 OF THE CLAYTON ACT, FOR A FULL EVIDENTIARY HEARING, AND FOR A PRE-HEARING CONFERENCE—Filed November 9, 1964

Comes now petitioner, the United States Department of Justice to state that it has an interest in the subject matter involved in the above-entitled proceeding; that it desires to intervene and be considered in all respects as a party thereto; that it requests that a formal hearing be ordered

at which relevant evidence may be adduced for consideration by the Commission, and that the Commission direct that a pre-hearing conference be held for the purpose of formulating the issues. Petitioner further requests the Commission to institute a proceeding for the purpose of [fol. 111] determining whether Section 7 of the Clayton Act would be violated by Greyhound's acquisition of REA stock under the circumstances and conditions outlined in REA's application. As grounds for such Commission action, petitioner respectfully shows the following:

I

Applicant, REA, seeks authority to issue 500,000 shares of its authorized but unissued common stock to the Greyhound Corporation for $20.00 per share upon the terms and conditions set forth in an agreement entered into by and between REA and Greyhound on October 6, 1964. Among other things, that agreement permits Greyhound to offer to purchase up to 1,000,000 additional shares of the common stock of REA from present shareholders at a price of $20.00 per share, cash. Also the agreement provides for the adoption of a resolution by the REA Board, which resolution was adopted on September 1, 1964, declaring the intention of REA to consider seriously and work toward a long-term agreement between REA and Greyhound to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage. Accordingly, the application states that REA believes that the 500,000 shares it desires to issue to Greyhound will give Greyhound a sufficient equity interest in the Applicant to provide a working basis which will justify both companies in going forward with the study of, and ultimately entering into an agreement with respect to the subject matter mentioned above. Furthermore, the agreement provides, [fol. 112] and the REA Board so resolved on September

1, 1964, that Greyhound shall be permitted to name 20 per cent of the REA Board of Directors.

II

While petitioner recognizes that the proposed transaction and the agreements related thereto raise serious questions of Greyhound control or power to control REA, it does not at this time take the position that the transaction will result in such control. Accordingly, petitioner does not actively urge that a section 5 control proceeding be instituted. This does not mean, however, that petitioner has concluded that the acquisition would not result in Greyhound control of or the power to control REA. Nor does it mean petitioner would be opposed to a section 5 proceeding if the Commission were to deem such a proceeding appropriate and necessary.

But no matter what the Commission may do about instituting a section 5 control proceeding, petitioner asserts that the application places before the Commission serious questions under section 7 of the Clayton Act which by virtue of section 11 thereof the Commission has a duty to enforce. Greyhound will, if the Commission approves this application, acquire a substantial stock interest in REA and establish a working basis with REA to enter into agreements of mutual advantage. Competitors of REA and Greyhound have asserted in papers filed with the Commission that they will be competitively disadvantaged by the proposed transaction. Their protests are tantamount to allegations that the effects of the proposed transaction may be substantially to lessen competition or to tend to create a monopoly. Therefore, the Commission in accordance with [fol. 113] its responsibilities under section 11, cannot avoid determining to what extent, if any, the proposed transaction would result in effects which section 7 of the Clayton Act is intended to prevent.

Since the anticompetitive issues raised by a Clayton Act section 7 proceeding are virtually identical to the competition issues which the Commission must consider in a

section 5 control proceeding when it undertakes to arrive at an "accommodation of section 5(2) and the antitrust legislation" [1] by "estimat[ing] the scope and apprais[ing] the effect of the curtailment of competition which will result" [2], the Commission may be well-advised to consolidate a section 5 proceeding, if one is instituted, with the section 7 proceeding which we believe it is required in any event to commence.

III

Petitioner further requests the Commission to direct that a pre-hearing conference be held for the purpose of formulating the issues in any proceedings which may be commenced as a result of the proposed transaction. In light of the numerous protests and petitions filed in this matter, it will be essential that the issues be defined prior to evidentiary hearings so that all parties may be aware of the issues as to which they should be prepared to address themselves.

[fol. 114]

IV

Accordingly, the United States Department of Justice respectfully prays that the Commission grant this petition for intervention and that the application herein be the subject of consolidated hearings under section 7 of the Clayton Act and sections 20a and 214 of the Interstate Commerce Act, and that this matter be set promptly for prehearing conference.

Dated at Washington, D. C. this 9th day of November, 1964.

Respectfully submitted,

William H. Orrick, Jr., Assistant Attorney General.
Joseph J. Saunders, Attorney, Department of Justice.
A. Paul Victor, Attorney, Department of Justice.

[fol. 115] Certificate of Service (omitted in printing).

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[1] Minneapolis & St. Louis R. Co., 361 U.S. 173, 186 (1959).

[2] McLean Trucking Co. v. United States, 321 U.S. 67, 87 (1944).

[fol. 116]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 23324

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AND PROTEST OF AMERICAN TRUCKING ASSOCIATIONS, INC., AND REGULAR COMMON CARRIER CONFERENCE AND REQUEST FOR ORAL HEARING—Filed November 9, 1964

* * * * * * *

[fol. 117] commodity common carriers of freight, and to advance such interests through cooperation and organization. Membership, embracing companies of all sizes, includes carriers operating in all the forty-eight contiguous states and Alaska.

III

The Executive Committee of ATA and the Board of Governors of the Conference, composed of motor carriers competitive with Railway Express Agency, Inc. (REA), and the freight operations of The Greyhound Corporation (Greyhound), have reviewed the matter and respectively directed ATA and the Conference to file this petition and protest.

IV

Petitioners file this pleading pursuant to notice of REA's application published in the Federal Register on October 24, 1964. Petitioners do not seek to broaden the issues, and we submit that they will not be broadened if we are permitted to intervene. The issues we raise are basic to the proper determination of REA's application herein and must be resolved in any event by the Commission in disposing of this proceeding. Accordingly, we ask that our

petition for leave to intervene be granted, and that due consideration be given to our protest to the application and our request for oral hearing.

V

REA has filed an application under sections 20a and 214 of the Interstate Commerce Act for authority to issue 500,000 shares of its authorized but unissued stock. The reason for the application is that REA's stockholders have approved the sale of a 20 percent stock interest in REA [fol. 118] to Greyhound,[1] and the proposed stock issuance represents that interest. The issuance of the 500,000 shares, along with the presently outstanding 1,999,188 shares, now owned by 60 railroads, will bring REA's total outstanding shares of stock to 2,499,188. Further, under and as part of the agreement between Greyhound and REA, Greyhound has made an offer to purchase up to 1,000,000 additional shares of REA's common stock from REA's railroad stockholders.

VI

Despite REA's vigorous assertions to the contrary, the transaction proposed by the application filed in this docket is an attempt to effect control of REA by Greyhound without going through a section 5 proceeding. As a condition precedent to REA's agreement to sell Greyhound 20 percent of its unissued stock, Greyhound had to offer to buy an additional 1,000,000 shares of REA's stock from the owning railroads (Exhibit 4, pp. 2-3). If Greyhound acquires the involved 500,000 shares and buys 1,000,000 more from the railroad stockholders, Greyhound will then own

[1] Pursuant to a resolution adopted by REA's stockholders at a special meeting on September 17, 1962, approval of at least two-thirds of the corporation's common stockholders was required to sell the 500,000 shares of stock to Greyhound. The vote was 1,654,572 shares in favor of the sale and 269,880 shares opposed (REA's Exhibit 6, pp. 2-3).

60 percent of REA's stock and will clearly control the company without Commission approval.[2]

And even if Greyhound should fail, after buying the 500,000 shares, to acquire the 1,000,000 shares of stock presently held by the railroads, it may still control REA. The Commission has held, in a long series of cases, that the holding of a minority interest in a company does not necessarily mean that control or operation in a common interest has not been effectuated. We request, therefore, that oral hearing be held so that all the circumstances and details regarding the proposed transaction under consideration may be established.

[fol. 119] VII

Petitioners allege further that the instant transaction is not for a lawful object within REA's corporate purposes, is not compatible with the public interest, and is not necessary or appropriate for, or consistent with, the proper performance by REA of service to the public as a common carrier, and that it will impair its ability to perform such service.

Prayer

For the reasons stated, ATA and the Conference respectfully request (1) that they be permitted to intervene and be treated as protestants hereto, (2) that oral hearing be held to determine whether the statutory requirements of sections 20a and 214 are met and to explore the question of control of REA by Greyhound, implicit in the application, and (3) that, pending such hearing, the Commission

[2] Actually, Greyhound need only acquire 749,595 shares of the outstanding stock in addition to the 500,000 shares here involved to hold a majority of the shares.

withhold granting the authority sought by REA in this proceeding.

Respectfully submitted,

American Trucking Associations, Inc., Peter T. Beardsley, Richard R. Sigmon, William R. Rubbert, Harry J. Jordan, Paul D. Borghesani, 1616 P Street, N. W., Washington, D. C. 20036.

Regular Common Carrier Conference, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036; Roland Rice, Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

Certificate of Service (omitted in printing).

[fol. 120]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

RETURN TO INFORMATION REQUEST TO REA—Filed November 17, 1964

[fol. 121]

1. *With reference to the price of $20 per share*:

a. *How was this price arrived at?*

In January 1964, representatives of Greyhound approached REA with a proposal for Greyhound to acquire a controlling interest in REA. As set forth in a letter dated January 31, 1964, from Greyhound to REA, Greyhound proposed, among other things, to purchase from REA stockholders 51% to 100% of the outstanding stock of REA at a price of $25 per share, Greyhound agreeing

[File endorsement omitted]

also to purchase from tendering REA stockholders their REA notes. The REA Board considered said proposal at its meeting on February 4, 1964 (see Annex A(1)), and requested Greyhound to submit a formal offer along the lines suggested.

In response to such request of the REA Board, Greyhound submitted a formal offer dated February 21, 1964, to purchase the REA stock, along with proposals for amendment of the Standard Express Operations Agreement. The REA Board passed such offer and proposals on to the REA stockholders without taking a position thereon (see Annex A(2)). From discussions had with various REA stockholders, it became abundantly clear that Greyhound's proposal would not be successful since there was little [fol. 122] likelihood, in view of the right of first refusal held by each of the stockholders, that Greyhound would be permitted to acquire any position in REA from REA stockholders.

In view thereof, and after a number of informal discussions, consideration was given to the possibility of Greyhound's acquisition of 500,000 shares of authorized but unissued REA stock, these shares not being subject to the right of first refusal. It was understood that, subsequent to such acquisition, Greyhound would make an offer to REA stockholders to purchase certain of their shares, Greyhound being fully aware that there was little likelihood, in view of the right of first refusal, that it would acquire any shares from REA stockholders. From REA's standpoint, the purpose of having Greyhound make an offer to the railroad stockholders was to satisfy the desire of certain of the REA stockholders that an offer be made which would trigger the right of first refusal and thereby assure such stockholders of a market for such shares. More importantly, the acquisition of 500,000 shares of authorized but unissued stock from REA would benefit REA by supplying capital which was sorely needed by REA to meet its anticipated capital expenditures.

At a meeting of the REA Board on July 7, 1964 (see [fol. 123] Annex A(3)), the President of REA submitted an outline of a new proposal by Greyhound to purchase from REA 500,000 authorized but unissued shares at a price of $16 per share and, after consummation of the purchase of the 500,000 shares, to offer to purchase additional shares from REA stockholders, at a price expected to be $25 per share. The REA Board approved in principle the Greyhound offer and requested Greyhound to submit a formal proposal along such lines.

Upon receipt of such formal proposal dated July 16, 1964 (see Annex A(4)), the REA Board at its meeting on July 28, 1964 (see Annex A(5)), unanimously directed the President of REA to appoint a Committee to negotiate a single price of $20 per share for both the stock to be purchased from REA and the stock to be purchased from REA stockholders. The reason why the Board unanimously requested negotiations at a single price of $20 a share (rather than at a price of $16 a share for the stock to be acquired from REA and $25 a share for the stock to be acquired from REA stockholders) was that certain of the REA stockholders expressed an intention to prevent Greyhound from acquiring any shares in addition to the 500,000 shares to be acquired from REA and insisted that it was unfair to require them to pay $25 a share on the exercise of their right of first refusal when Greyhound [fol. 124] was purchasing shares from REA at about the same time at $16 a share.

The appointed Committee and the President met with representatives of Greyhound and Greyhound indicated it would consider a formal offer by REA incorporating such change if such offer were first approved by REA stockholders. At a meeting of the REA Board on September 1, 1964 (see Annex A(6)), the REA Board, by a vote of 14 to 3, authorized the execution of such a formal offer from REA to Greyhound and such offer was approved by a favorable vote of over 80% of REA stockholders at their meeting on October 1, 1964, and accepted, subject to Inter-

state Commerce Commission approval, by Greyhound on October 6, 1964.

REA is of the firm belief that the price of $20 per share is fair and reasonable. Among the factors considered in reaching such conclusion are the following:

(1) REA's current earnings are about $1.00 and a price of 20 times earnings appears favorable to REA. The stock of railroads with AA and A bond ratings was selling recently at 12 to 13 times earnings, based on June 30, 1964, earnings, and the 1963 Moody's 25 railroads stock average was at a ratio of 12.5 times earnings.

(2) REA's book value per share is only $9, even [fol. 125] if the tax reserves are fully included.

(3) In 1963 the Boston & Maine Railroad petitioned and received authority to substitute its shares of REA stock in lieu of collateral held as security for a government-guaranteed loan and the value placed on the REA stock at that time by the Commission was less than $20 per share.

(4) Lehman Brothers recently offered to underwrite a public sale of 400,000 new shares at a net return of $16 per share to REA—if various conditions were met, including REA's maintaining earnings about 50% higher than REA is actually achieving.

b. *Furnish copies of the computations and working papers.*

See answer to item 1a and annexes referred to therein. There are no other computations or working papers.

2. *With reference to the special meeting of stockholders of REA held on October 1, 1964:*

a. *Furnish the identity of each stockholder who voted against the proposed resolutions.*

[fol. 126] Atchison, Topeka and Santa Fe Railway Company
Denver & Rio Grande Western Railroad Company
Missouri Pacific Railroad Company
St. Louis Southwestern Railway Company
St. Louis Southwestern Railway Company of Texas
Southern Pacific Company
Texas and Pacific Railway Company

b. *Furnish the identity of each stockholder who was neither present nor represented by proxy at the meeting.*

Burlington & Rock Island Railroad Company
Chicago, Burlington & Quincy Railroad Company
Colorado & Southern Railway Company
Kansas City Southern Railway Company
Western Pacific Railroad Company

c. *Furnish a copy of the proxy material submitted to stockholders prior to the meeting.*

Attached hereto as Annex B are copies of the following:

(1) Notice of Meeting dated September 1, 1964;

(2) Proxy Statement dated September 1, 1964; and

(3) Proxy for Special Meeting of Stockholders, in the form mailed by REA to each stockholder prior to the meeting.

3. *For the past 10 years, for each item submitted to vote to the stockholders, furnish the following:*

a. *The total outstanding voting power at the time.*

b. *The total number of shares voted.*

[fol. 127]

c. *The total number of shares which were not voted.*

d. *What percent of the stock was needed to approve the items voted on?*

Attached hereto as Annex C is a chart furnishing in tabular form the information requested.

4. *For each board of directors meeting during the past 5 years, indicate:*

a. *The number of directors present.*

b. *The number of directors absent.*

c. *The number of vacancies.*

d. *The number of directors constituting a quorum.*

e. *The number of affirmative votes necessary to carry a resolution.*

Attached hereto as Annex D is a chart indicating in tabular form the information requested.

5. *Are there any existing interlocking directors between Greyhound, its affiliates and subsidiaries, on the one hand, and REA, its affiliates and subsidiaries and the owning railroads, their subsidiaries and affiliates, on the other hand? If so, please identify.*

REA has no knowledge of any such interlocking directors and Greyhound has informed REA that there are no such interlocking directors. (A copy of the letter dated October 27, 1964, from REA to Greyhound and a copy of the reply dated October 31, 1964, are annexed hereto as Annex E.)

6. *Is it contemplated or anticipated that Greyhound will dispose of any of the REA stock to any of its, Greyhound's, affiliates or subsidiaries?*

REA does not, and Greyhound has informed REA that [fol. 128] Greyhound does not, contemplate or anticipate that Greyhound will dispose of any of the REA stock to any of Greyhound's affiliates or subsidiaries. See Annex E.

7. *Are there any commitments by any of present REA stockholders to sell their holdings to Greyhound? If so, give details.*

REA has no knowledge of any such commitments and Greyhound has informed REA that there are no such commitments. See Annex E.

8. *After giving effect to the proposed transaction and the election of the so-called "Greyhound Directors", identify, by name and business affiliation, each of the 25 directors.*

The information requested is set forth in Annex F.

9. *Have there been any discussions, considerations or commitments, whatsoever, relative to placing any of the five so-called "Greyhound Directors" on the Executive Committee? If so, furnish details.*

REA has no executive committee and has given no consideration to creating an executive committee or placing thereon any of the so-called "Greyhound Directors".

10. *Furnish such additional details as are available as to precisely what is contemplated in the consolidation of the operating functions and facilities of REA and Greyhound.*

Attached hereto as Annex G is a memorandum dated June 18, 1964, entitled "Memorandum of Understanding Reached by R. F. Shaffer, Executive Vice President, Greyhound Lines, Inc. and Truman T. Moore, Vice President, [fol. 129] Operations, REA Express of Potential Benefits by Consolidation or Merger of Certain Activities of the Two Companies".

The memorandum does not purport to be a complete study or plan of consolidation of operating functions and facilities of REA and Greyhound, and was meant to be only an itemization of possible economies and an estimate of their magnitude. The memorandum is the product of only a 2½-day discussion in which Messrs. Moore and Shaffer were directed to include in their study any and all economies which, as operating men, they would consider desirable without giving any consideration to any other factors which might make such economies unattainable or impossible to achieve. This study was made at a time when the Greyhound proposal under consideration contemplated Greyhound's acquiring in excess of 50% of the outstanding shares of REA stock. Extensive studies and investigations (which have not been undertaken) would be required before REA and Greyhound could proceed with any economies in operating functions or facilities.

11. *Furnish such additional details as are available relative to the contemplated sale of REA stock to airlines and/or the general public. (See paragraph (d), page 1, Exhibit 5).*

    a. *How many shares?*

    b. *Will it be presently authorized and outstanding shares?*

[fol. 130]

    c. *If it will be "new" shares, unauthorized at the present time, how will the Greyhound's right to elect 20 percent of the board of directors be affected?*

REA has taken no steps towards, and has reached no conclusions concerning, a sale of REA stock to airlines and/or the general public other than the adoption by the REA Board of Directors of the resolution referred to on page 10 of the minutes attached hereto as Annex A(6).

As to subparagraph c of the question, regardless of whether and how REA might sell stock in the future, Greyhound's right to name five directors is expressly made subject (in Article II of the REA By-laws, as amended), to Greyhound's holding at least 20% of the REA stock issued and outstanding at the time.

12. *Assuming that Greyhound purchases a portion, or all, of the additional 1,000,000 shares, will Greyhound's representation on the board of directors be increased proportionately?*

REA has made no commitment, and has no plans, to increase Greyhound's representation on the REA Board of Directors in the unlikely event that Greyhound could purchase a portion, or all, of the additional 1,000,000 shares which may be tendered to Greyhound. The By-laws of REA, as amended, do not provide for any such proportionate representation and such By-laws provisions may be amended only by the vote of two-thirds of REA's stock issued and outstanding.

[fol. 131]

13. *Should the Eastern District Railroads own less than 1,085,748 shares, would they still have the right to nominate seven REA directors?*

Yes, under the REA By-laws, which may be amended in this respect only by a vote of two-thirds of REA's issued and outstanding stock.

14. *Should the Western District Railroads own less than 633,180 shares, would they still have the right to nominate six REA directors?*

Yes, under the REA By-laws, which may be amended in this respect only by a vote of two-thirds of REA's issued and outstanding stock.

15. *Should the Southern District Railroads own less than 280,260 shares, would they still have the right to nominate five REA directors?*

Yes, under the REA By-laws, which may be amended in this respect only by a vote of two-thirds of REA's issued and outstanding stock.

16. *Does nomination of a director by a railroad district guarantee election of that person to the REA Board of Directors?*

Article Ninth of REA's charter provides that directors *shall* be nominated as provided in the By-laws. The By-laws in turn provide a specific method for the nomination of directors. Section 2 of Article II of the By-laws, as amended, provides that the Board of Directors shall be elected by ballot at each annual meeting of stockholders and further provides that there may be seven Directors-at-[fol. 132] large and the remainder *shall be the persons nominated by districts.* The charter and By-laws by their terms thus undertake to guarantee election to directors nominated by a railroad district and such has been the fact throughout the corporate existence of REA.

Respectfully submitted,

WILLIAM J. TAYLOR
ALAN F. DONIGER
JOEL H. GROSS

/s/ HENRY P. RIORDAN
Counsel for Applicant
Railway Express Agency,
Incorporated

Dated: November 16, 1964.

[fol. 133] Certificate of Service (omitted in printing).

[fol. 134]

ANNEXES TO RETURN TO INFORMATION REQUEST TO REA

Attached are the following Annexes to the Return to Information Request to REA dated November 16, 1964:

Annex No.	*Document*
A(1)	Excerpt from minutes of meeting of REA Board on February 4, 1964
A(2)	Excerpt from minutes of meeting of REA Board on March 3, 1964
A(3)	Excerpt from minutes of meeting of REA Board on July 7, 1964
A(4)	Letter dated July 16, 1964, from The Greyhound Corporation to REA
A(5)	Excerpt from minutes of meeting of REA Board on July 28, 1964
A(6)	Excerpt from minutes of meeting of REA Board on September 1, 1964
B	Notice of Special Meeting of Stockholders, Proxy Statement and Proxy for Special Meeting of Stockholders held on October 1, 1964
C	Information requested in question 3 with respect to each item submitted to the vote of REA stockholders for the past 10 years
D	Information requested in question 4 with respect to each REA Board of Directors meeting during the past 5 years
E	Letter dated October 27, 1964, from REA to The Greyhound Corporation and reply dated October 31, 1964

[fol. 135]

F	Composition of REA Board after giving effect to the election of the so-called "Greyhound Directors"

Annex No.	*Document*
G	Memorandum of understanding reached by R. F. Shaffer, Executive Vice President, Greyhound Lines, Inc. and Truman T. Moore, Vice President, Operations, R E A Express of potential benefits by consolidation or merger of certain activities of the two companies

[fol. 136]

Annex A(1)

BOARD OF DIRECTORS, February 4, 1964

PROPOSAL BY THE GREYHOUND CORPORATION TO ACQUIRE CAPITAL STOCK OF THE COMPANY

The President referred to material distributed to the Directors with his letter of January 21, 1964 regarding a tentative proposal by the Greyhound Corporation for acquisition of capital stock of the Company. He said that a slightly modified proposal, dated January 31, 1964, had just been received from Greyhound, such proposal reading as follows:

"THE GREYHOUND CORPORATION
140 South Dearborn St.
Chicago 3, Ill.

January 31, 1964

"Mr. William B. Johnson
President
Railway Express Agency
219 East 47th Street
New York 17, New York

"Dear Mr. Johnson:

"We have been discussing with you and a Committee of your Directors the possibility of The Greyhound

Corporation (herein called 'Greyhound') acquiring a controlling interest in Railway Express Agency, Incorporated, (herein called 'REA'). It appears from these conversations that there may be an interest on the part of many of the shareholders of REA in disposing of their stock. Accordingly, Greyhound is presenting to you herein an outline of a tentative proposal for consideration by you and your Directors at their meeting on February 4, 1964. This tentative proposal has not been presented to The Greyhound Corporation's Board of Directors, but its Executive Committee has authorized the exploration of this matter with you along the lines hereinafter set forth.

"The tentative proposal is as follows:

"1. Greyhound would pay the REA shareholders $25 per share for each share of REA stock held by them. You will recognize that this is somewhat above the valuation figure used by the Interstate Commerce Commission.

"2. Greyhound would acquire at least 51% of the outstanding REA stock.

[fol. 137] "3. At least an additional 16% of the presently outstanding REA stock would be tendered to Greyhound which in turn intends to make said stock available for purchase by the major airlines in the United States. This means that the railroads must tender to Greyhound at least 67% of the outstanding REA stock.

"4. The provision in the operating agreement, effective October 1, 1959, giving REA shareholders a right of first refusal to purchase any REA shares tendered for sale would have to be modified or all of the present REA shareholders would have to waive their rights under that provision. The provision is found in Section 3 of Article 16 of the operating agreement.

"5. If an REA shareholder tendered its stock to Greyhound at the price of $25 per share, Greyhound would purchase its REA notes at their face value, giving the REA shareholder therefor cash and new income debentures in the ratio of $17 cash to $10 in income debentures. In other words, if all of the stock should be tendered to Greyhound, Greyhound would purchase the $27 million in REA notes now outstanding by paying $17 million in cash and giving $10 million of income debentures.

"6. The new income debentures would entitle the debenture holders to their proportionate shares of 20% of the pretax earnings of REA after all payments to the railroads under the operating agreement, limited to an annual return of not more than 12% on the face amount of the debentures. In other words, if 75% of the outstanding stock were sold to Greyhound, 75% of the existing notes would be refunded and the new income debentures issued in exchange therefor would be entitled to 75% of 20% of the pretax earnings, or 15% of pretax earnings, subject to the limitations mentioned above.

"7. The new income debentures would have a 40-year maturity, would be callable at par after ten years and would, of course, have no fixed coupon rate or sinking funds.

"8. If possible, the existing notes of the shareholders who do not sell their stock to Greyhound would be reissued in similar form but with more workable and flexible provisions and with some correlation to the new income debentures proposed above.

"9. The bylaws of REA would have to be amended to change the method of election of Directors so that Greyhound and the airlines could have their proportionate number of Directors.

"10. The operating agreement btween REA and the railroads would have to be amended in the following respects:

"(a) Article 10, Section 3(a), would have to be amended to eliminate the control of the rail Directors over the formula referred to therein. This could be [fol. 138] accomplished by eliminating the second sentence of that Section.

"(b) Some modification in Article 16, Section 2, relative to the right of withdrawal on the part of the rail carriers would be necessary. Greyhound is to pay a substantial amount of money for its interest in REA. It would, therefore, want some assurance that the rail carriers were going to continue to provide essential service. Greyhound buses would be able to perform only a relatively small portion of the underlying transportation.

"(c) As already mentioned, the right of first refusal set forth in Article 16, Section 3, would have to be eliminated or the waiver of all existing stockholdholders would have to be obtained.

"Consideration should be given at some time in the future to the substitution of a regular tariff arrangement for the existing operating agreement, but this is not a condition of the proposed acquisition.

"11. The final transaction would be subject to the approval of the Interstate Commerce Commission.

"If Greyhound should be successful in acquiring the requisite stock upon substantially the foregoing basis, it would be prepared to retain the present management and to carry on the REA operations substantially as they are now being carried on. Greyhound would also be prepared to finance its pro rata share of the capital requirements of REA.

"If your Board of Directors is interested in the foregoing, we are prepared to sit down with your repre-

sentatives and attempt to work out a formal agreement for approval by the Board of Directors of REA and Greyhound and the submission to railroad shareholders.

Yours very truly,

THE GREYHOUND CORPORATION

By /s/ D. P. Boothe, Jr.
D. P. Boothe, Jr."

He pointed out that the said proposal is conditioned upon unspecified amendments to certain sections of the Standard Express Operations Agreement as well as the tender to Greyhound of a minimum of 67% of the capital stock of the Company.

[fol. 139] Mr. D. P. Boothe, Jr., a Director of The Greyhound Corporation entered the meeting and spoke briefly on the tentative proposal. After discussion of some of the features of such proposal, Mr. Boothe left the meeting.

After discussion, on motion duly made by Mr. Miller, seconded by Mr. McInnes and carried, it was voted to request The Greyhound Corporation (1) to submit a specific proposal for amendments to the Standard Express Operations Agreement pursuant to Article 16, Section 1(c) thereof; and (2) to submit a formal offer for purchase of capital stock upon terms and conditions no less favorable to present stockholders than those outlined in the tentative proposal quoted above—both the amendments and the offer to be received within two weeks if possible, and to be considered at the March meeting of the Board, for referral to the railroad signatories to the Standard Agreement and to the stockholders.

STAMP—APPROVED BY BOARD OF DIRECTORS
RAILWAY EXPRESS AGENCY, INCORPORATED

Feb. 4, 1964
Date

Annex A(2)

/s/ R. J. Fletcher, Secretary

[fol. 140] BOARD OF DIRECTORS, March 3, 1964

PROPOSAL BY THE GREYHOUND CORPORATION TO ACQUIRE CAPITAL STOCK OF THE COMPANY

The President referred to the action of this Board at its meeting February 4, 1964 when it voted to request The Greyhound Corporation (1) to submit a specific proposal for amendments to the Standard Express Operations Agreement; and (2) to submit a formal offer for purchase of capital stock upon terms and conditions no less favorable to present stockholders than those outlined in the tentative proposal presented to the meeting—both the amendments and the offer to be considered at the March meeting of the Board, for referral to the railroad signatories to the Standard Agreement and to the stockholders. He said that in response to this request, Greyhound forwarded on February 21 three documents—a letter dealing with contract amendments, a transmittal letter and a letter addressed to REA stockholders—all of which were sent to the Directors on the same day. He said that the matter was now before the Board for consideration.

After discussion, on motion, duly made, seconded and carried, it was—

RESOLVED, That the President be and he hereby is directed to send to the stockholders of the Company:

1. Letter to the shareholders from the Greyhound Corporation relating to its offer to purchase stock of REA;
2. Transmittal letter from Greyhound; and
3. Letter from Greyhound setting forth proposed amendments to the Standard Express Operations Agreement;

all being dated February 21, 1964, together with a transmittal letter indicating that the referral to the

stockholders is by direction of the Board and that the Board has taken no position on the Greyhound proposal.

[fol. 141] Annex A(2)

THE GREYHOUND CORPORATION

140 South Dearborn Street, Chicago 3, Illinois

February 21, 1964

Shareholders of
Railway Express Agency, Incorporated
c/o Mr. William B. Johnson, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York 17, New York

Dear REA Shareholder:

Representatives of The Greyhound Corporation (herein called "Greyhound") have discussed with representatives of Railway Express Agency, Incorporated, (herein called "REA") the possibility of Greyhound's acquiring a controlling stock interest in REA. It appears from these discussions that there is an interest on the part of many of the REA shareholders in disposing of their stock. Accordingly, Greyhound herein offers to purchase your stock upon the following basis:

1. Greyhound will pay to you $25 per share for each share of REA stock held by you.

2. If you tender your stock to Greyhound at the price of $25 per share, Greyhound will acquire or cause REA to acquire or refund your REA notes dated October 1, 1959, at their face value, giving you therefor cash and new REA income debentures in the ratio of $17.637 cash to $10 in REA income debentures or at your option entirely in cash.

3. The new REA income debentures would bear non-cumulative interest at the rate of 12% per annum payable solely out of 20% of the pretax earnings of REA after all payments to the railroads under the operating agreement dated October 1, 1959, such percentage to be reduced proportionately to the extent noteholders elect to take cash rather than debentures. The debentures would have a 40-year maturity, would be callable at par after 1973, and would, of course, have no fixed coupon rate.

[fol. 142] The following are conditions of the foregoing offer:

1. Greyhound must acquire at least 67% of the outstanding REA stock, or such lesser percentage as Greyhound in its sole discretion may elect to accept.

2. A formal agreement of sale providing details of the sale within the framework of the foregoing offer must be worked out with REA shareholder representatives and approved by the Executive Committee or the Board of Directors of Greyhound.

3. The Greyhound accountants must confirm that the REA audited balance sheet of June 30, 1963, which REA furnished to us, substantially represents the financial condition of REA subject to the results of normal business operations of REA since that date.

4. The final transaction must be approved by the Interstate Commerce Commission.

5. The operating agreement between REA and the railroads dated October 1, 1959, must be amended as provided in the Greyhound letter of February 21, 1964, to Mr. William B. Johnson.

If you are prepared to recommend the acceptance to your Board of Directors of the foregoing offer subject to the foregoing conditions, will you so indicate at the bottom of this letter. As soon as stockholders owning at least 67%

(or such lesser percentage as we may elect) of the REA stock have indicated their tentative acceptance we shall proceed to endeavor to work out a mutually satisfactory [fol. 143] formal agreement of sale for consideration by you and your Board of Directors and the Executive Committee or the Board of Directors of Greyhound.

Yours very truly,

THE GREYHOUND CORPORATION

By /s/ GERALD H. TRAUTMAN
Its Vice-President

....., 1964

The undersigned shareholder of Railway Express Agency, Incorporated, is prepared to recommend the acceptance of the foregoing offer subject to the foregoing conditions.

..... RAILROAD COMPANY

By .....

Its .....

[fol. 144] Annex A(2)

THE GREYHOUND CORPORATION
140 South Dearborn Street, Chicago 3, Illinois

February 21, 1964

Mr. William B. Johnson
President
Railway Express Agency, Incorporated
219 East 42nd Street
New York, New York 10017

Dear Mr. Johnson:

This is in response to the first item covered by the resolution of the Railway Express Agency Board of Directors; namely, the request for submission of a specific proposal for amendments to the Standard Express Operations

Agreement pursuant to Article 16, Section 1 (c), thereof. It is proposed that the Standard Express Operations Agreement made as of October 1, 1959, as heretofore amended, be further amended in the following respects:

(1) Subparagraph (a) of Section 3 of Article 10 shall be amended to read in its entirety as follows:

"A car-foot mile rate for each group shall be established on the basis of the average express service out-of-pocket costs of the rail companies party to this form of agreement in such group. Such out-of-pocket cost for each group shall be determined by the use of a uniform formula prescribed by the Board of Directors of the Express Company, upon the recommendation of an Accounting Committee created by the Board in accordance with Section 1 of Article 15, *provided, however,* that, if the Rail Company dissents from the formula, the question shall be submitted to arbitration as provided in Section 4 of Article 15."

(2) Section 2 of Article 16 is hereby amended to read in its entirety as follows:

"SECTION 2. The Rail Company may withdraw entirely, but not in part, from this Agreement at any time after July 1, 1967, provided that it has first given at least twelve (12) months' advance written notice to [fol. 145] the Express Company. When any such twelve (12) months' notice of withdrawal is given by any other Rail Company party to this form of agreement, the Rail Company may withdraw on the same date as such other Rail Company, provided that it gives the Express Company written notice of intention to do so at least eight (8) months prior to such date. The Express Company shall forthwith advise all Rail Companies party to this form of agreement of any notice of withdrawal received under this Section."

(3) Section 3 of Article 16 shall be amended by adding the following paragraph as the last paragraph of said Section 3:

"Anything in this Agreement to the contrary notwithstanding, the foregoing provisions of this Section 3 shall not apply to a sale or other disposition of shares of stock (including Stamped Stock) of the Express Company pursuant to an agreement entered into prior to December 31, 1964, between Rail Company and The Greyhound Corporation, *provided, however,* that such sale or other disposition shall be made pursuant to an offer made to all holders of stock of the Express Company, which offer shall provide:

(a) Greyhound will pay to the Express Company shareholders $25 per share for each share of REA stock.

(b) If an REA shareholder tenders its stock to Greyhound at the price of $25 per share, Greyhound will acquire its REA notes dated October 1, 1959, at their face value, giving shareholder therefor cash and new REA income debentures in the ratio of $17.637 cash to $10 in REA income debentures or at shareholders option entirely in cash.

(c) The new REA income debentures would bear noncumulative interest at the rate of 12% per annum payable solely out of 20% of the pretax earnings of REA after all payments to the railroads under the operating agreement dated October 1, 1959, such percentage to be reduced proportionately to the extent noteholders elect to take cash rather than debentures. The debentures would have a 40-year maturity, would [fol. 146] be callable at par after 1973, and would, of course, have no fixed coupon rate.

The following are conditions of the foregoing offer:

(a) Greyhound must acquire at least 67% of the outstanding REA stock or such lesser percentage as Greyhound in its sole discretion may elect to accept.

(b) A formal agreement of sale providing details of the sale within the framework of the foregoing offer must be worked out with REA shareholder representatives and approved by the Executive Committee or the Board of Directors of Greyhound.

(c) The Greyhound accountants must confirm that the REA audited balance sheet of June 30, 1963, which REA furnished to us, substantially represents the financial condition of REA subject to the results of normal business operations of REA since that date.

(d) The final transaction must be approved by the Interstate Commerce Commission.

(e) The operating agreement between REA and the railroads dated October 1, 1959, must be amended as provided in the Greyhound letter of February 21, 1964, to Mr. William B. Johnson.

The amendments set forth in paragraphs 1 and 2 above shall not become effective other than as provided in Article 16, Section 1 (c) of the Standard Express Operations Agreement and unless The Greyhound Corporation accepts, pursuant to the offer described in paragraph 3 above, tenders of more than 50% of the issued and outstanding Common Stock of the Express Company.

Very sincerely yours,

/s/ GERALD H. TRAUTMAN
VP and General Counsel

[fol. 147] Annex A(2)

THE GREYHOUND CORPORATION

140 South Dearborn Street

Chicago 3, Illinois

OFFICE OF THE GENERAL COUNSEL
601 California Street
San Francisco, California 94108 February 21, 1964

AIR MAIL

Mr. William B. Johnson, President
Railway Express Agency, Incorporated
219 East 42nd Street
New York 17, New York

Dear Mr. Johnson:

Attached hereto please find 5 copies of a form of offer by The Greyhound Corporation to acquire the REA stock. You are authorized to transmit this offer to your shareholders if you and your Board decide to do so.

Greyhound is also prepared to work with you and your Directors to bring about an acquisition by Greyhound on either of two other bases:

1. An exchange of REA stock for Greyhound common stock with some arrangement such as a voting trust which would prevent the railroads from voting the Greyhound stock so long as the stock is held by the railroads.

2. The acquisition of assets of REA by Greyhound for cash or common stock, such common stock to be without voting rights as above indicated.

Very sincerely yours,

/s/ GERALD H. TRAUTMAN

Enclosures

[fol. 148] Annex A(3)

BOARD OF DIRECTORS, July 7, 1964

GREYHOUND PROPOSAL FOR PARTICIPATION IN OWNERSHIP OF THE EXPRESS COMPANY

At the request of certain members of the Board the President referred to the outstanding offer of Greyhound Corporation to purchase stock of the express company.

The President distributed to the members of the Board a proposed program of Greyhound participation in ownership of the express company which reads as follows:

A. Greyhound will offer to purchase from Railway Express Agency, Inc., 500,000 shares of authorized but unissued R E A stock at $16 per share, cash. The only conditions attached to this offer will be:

1. Greyhound shall have the privilege of naming 20% of the R E A Board of Directors.

2. The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

3. The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and Greyhound to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

4. The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the general public if and when conditions appear favorable to the best interests of R E A as a company.

[fol. 149] B. If and when Greyhound acquires the above mentioned 500,000 shares, it will forthwith offer to purchase from such present stockholders as desire to sell their stock a maximum of 749,594 shares (1,999,188 + 500,000 = 2,499,188 ÷ 2 = 1,249,594 — 500,000 = 749,594). In the event that present holders desire to sell more than 749,594 shares in the aggregate, Greyhound will decide to whom the offers shall be made. Offers will definitely be made to all railroad shareholders not presently transporting LCL express.

The President reported that he was advised by Greyhound that it was their intent that Section B of the aforementioned proposed program of Greyhound participation in ownership of the express company contemplated an offering price of $25 per share to present stockholders. The President pointed out, however, that Section B was actually a matter involving the stockholders individually and Greyhound and therefore not within the province of the Board to act upon.

The President further advised that Greyhound desires to secure a side agreement with at least one railroad which will agree not to withdraw from the Standard Express Operations Agreement before the end of 1966 and that, upon request from Greyhound, said railroad will exercise its right to demand arbitration of any change in the out-of-pocket cost formula mentioned in Article 10, Section 3 of the Standard Express Operations Agreement so that Greyhound may contest any such change which it deems unfair to R E A as a company.

After discussion of the proposed program, upon motion, duly made, second and carried, the following resolution was adopted, Messrs. Peoples and Caiazza voting no:

[fol. 150] RESOLVED, that this Board approve in principle the outline of the proposed program submitted to this meeting pursuant to which The Greyhound Corporation would acquire an interest in this corporation, and subject to the submission of a formal proposal by the Greyhound Corporation in substantial conformance with the outline of the proposed program submitted to this meeting, this Board of Directors will favorably recommend such proposal to the managements of its Railroad stockholders for consideration.

The Board then discussed whether to call a Special Meeting of the stockholders to consider the proposed program, after which, on motion, duly made, seconded and carried, the following resolution was adopted:

RESOLVED, that the actions of this Board taken this date be transmitted to the Greyhound Corporation and that after the formal proposal is received from Greyhound Corporation it be sent to all Board members, after which the President shall call a Special Meeting of the Board to consider the method and procedure for submitting Greyhound's formal proposal to the company's stockholders.

[fol. 151] Annex A(4)

THE GREYHOUND CORPORATION

140 Dearborn Street

Chicago 3, Illinois

OFFICE OF THE GENERAL COUNSEL
601 California Street
San Francisco, California

July 16, 1964

Mr. Lawrence Berman
Corporate Secretary
R E A Express
219 East 42nd Street
New York, N. Y.

Dear Mr. Berman:

This will acknowledge your letter of July 8, 1964 advising me of the action of the R E A Board of Directors at its meeting held in New York City on July 7, 1964. The resolution of the R E A Board together with the proposed program referred to therein has been considered by representatives of The Greyhound Corporation and its wholly owned operating subsidiary, Greyhound Lines, Inc. (herein jointly called "Greyhound") and I am authorized to make the offer hereinafter set forth for consideration by the R E A Board and for submission to the R E A stockholders.

Before setting forth the terms of the offer, may I say that Greyhound's interest in R E A at the time when negotiations were commenced several months ago and at the present time stems primarily from our views as to the improvements in service to the public, improvements in the revenues of each of our companies and economies in the operations of each of our companies which could be realized through combination and correlation of certain of

our facilities and services. The studies which we have made separately and jointly with your representatives confirm that there are tremendous possibilities in these respects. We feel, however, that in order to give Greyhound an incentive to pursue these possibilities it should have at least a 20% equity interest in R E A; otherwise Greyhound is somewhat in the position of devoting its time and efforts to the improvement of someone else's property.

[fol. 152] In order to implement the foregoing, Greyhound offers to purchase from R E A 500,000 shares of authorized but unissued R E A stock at the price of $16 per share upon the following terms and conditions:

1. Greyhound will pay cash for said stock upon receipt of the certificate evidencing such shares.

2. The R E A By-Laws will be amended so that Greyhound can name 20% of the R E A Board of Directors.

3. The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

4. The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and Greyhound to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies to be shared by R E A and Greyhound and to improve R E A and Greyhound services and increase public receptivity and patronage of these services.

5. The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the gen-

eral public if and when conditions appear favorable to the best interests of R E A as a company.

[fol. 153] We would appreciate prompt advice from you as to whether this offer has been accepted subject to all necessary authorizations from the Interstate Commerce Commission.

If Greyhound should acquire said 500,000 shares, it would be Greyhound's intention to accept additional shares of R E A stock tendered to it by present R E A shareholders. It would be expected that Greyhound would pay cash for said shares up to but not exceeding $25 per share, that Greyhound would accept up to 749,594 shares, this being the number of shares in combination with the initial 500,000 shares which would give Greyhound a 50% interest in R E A and leave the railroads with the other 50% interest, and that as Greyhound acquired additional shares, its representation on the R E A Board would be increased proportionately up to 50% of the members on said Board.

It is understood that these additional shares are subject to a right of first refusal of the existing R E A shareholders. It is also understood that some of the railroads, apparently a minority, object to the acquisition by Greyhound of these additional shares. Greyhound does not want to create dissension among the R E A shareholders or "buy into a controversy." This in our opinion would delay and perhaps frustrate completely the improvements in service and revenues and the economies in operations previously discussed. Accordingly, Greyhound is willing at this time to proceed upon the basis of the foregoing offer, leaving to the future the question of the acquisition of additional shares by Greyhound and giving the railroads an opportunity to reconcile their views on this question.

These negotiations have been in progress for a number of months. It is Greyhound's earnest desire to bring them to a conclusion as rapidly as possible either by acceptance or rejection of the foregoing offer. We stand ready to

[fol. 154] cooperate with you in all respects to bring this matter to a successful conclusion.

Very truly yours,

/s/ GERALD H. TRAUTMAN
GERALD H. TRAUTMAN
Vice President and General Counsel, The Greyhound Corporation and Greyhound Lines, Inc.

cc - Mr. William B. Johnson, President
Railway Express Agency, Inc.

[fol. 155] Annex A(5)

BOARD OF DIRECTORS, July 28, 1964

GREYHOUND PROPOSAL FOR PARTICIPATION IN OWNERSHIP OF THE EXPRESS COMPANY

The President advised the Board of Directors that an offer dated July 16, 1964 by The Greyhound Corporation had been received and transmitted to the members of the Board by letter dated July 17, 1964. The President referred to the resolution of the Board of Directors adopted at its meeting on July 7, 1964 approving in principle an outline of the proposed program and directing the President, upon receipt of an offer by The Greyhound Corporation to call a special meeting of this Board to consider the method and procedure for submitting the formal proposal to the stockholders.

The President further advised that he had asked the law firm of Cravath, Swaine and Moore to prepare appropriate resolutions in accordance with resolution of the Board of Directors of July 7, 1964. The President presented to the Board as a docket item the resolutions that were prepared by the Cravath firm at his request and asked the Board what their desires were in that respect. Upon motion, duly

made, seconded and carried, the resolutions prepared by the Cravath firm were continued on the docket.

Upon further discussion, the Board of Directors concluded to designate a committee to meet with the Chief Executive Officer of The Greyhound Corporation for purpose of negotiating certain changes in the aforementioned offer dated July 16, 1964; whereupon, after full discussion, upon motion, duly made, seconded and carried, the following resolution was duly adopted unanimously:

> RESOLVED, that the President be instructed to constitute a committee made up of two Representatives from each of the three districts, and the President, to meet with the Chief Executive Officer of Greyhound Corporation for the purpose of obtaining an offer from Greyhound Corporation in all respects similar to the offer submitted to this Corporation on July 16, 1964, except as follows:
>
> [fol. 156] 1. A single price of $20 shall be offered for both the 500,000 shares of unissued stock and the stamped stock now held by present shareholders; and
>
> 2. The stated maximum of 749,594 shares shall be increased to 1,000,000 shares.

The Eastern Negotiating Committee represented that they expect to have a minimum of 900,000 presently outstanding shares available for sale to the Buying Group of railroad stockholders if they choose to exercise their right of first refusal.

[fol. 157] Annex A(6)

BOARD OF DIRECTORS, September 1, 1964
(Continued from July 28, 1964)

GREYHOUND PROPOSAL FOR PARTICIPATION IN OWNERSHIP OF THE EXPRESS COMPANY

The President referred to an offer by The Greyhound Corporation dated July 16, 1964 which was submitted to the Board at a Special Meeting July 28, 1964 pursuant to which Greyhound would acquire an interest in this corporation. The President further referred to the resolution adopted unanimously by the Board at the Special Meeting of July 28, 1964 wherein the President was instructed to constitute a committee to meet with the Chief Executive Officer of The Greyhound Corporation for the purpose of obtaining an offer by The Greyhound Corporation in all respects similar to the offer submitted to this corporation on July 16, 1964 except that a single price of $20.00 should be substituted for both the 500,000 shares of unissued stock and the stamped stock now held by present shareholders and that the stated maximum of 749,594 shares should be increased to 1,000,000 shares.

The President advised that pursuant to the aforementioned resolution a Committee comprised of the President, Messrs. Brown (PRR), Hoffman (NYCRR), Johnston (IC), Osborn (ACL), Peoples (SP) and Macfarlane (NP) met with Mr. Fred Ackerman, Chief Executive Officer of The Greyhound Corporation, and Gerald H. Trautman, General Counsel of The Greyhound Corporation in the office of the President on August 26, 1964.

The President reported that—

[fol. 158] The Committee communicated the substance of the July 28, 1964, resolution of this Board to the representatives of Greyhound. It was agreed that Greyhound would consider the terms suggested in the resolution and would report to the President subsequent to the meeting of the Board of Directors of Greyhound on August 27, 1964.

Immediately following the meeting of the Greyhound Board, Mr. Ackerman and Mr. Trautman reported to the President that Greyhound was reluctant to make another formal offer to R E A because it was not clear to them, in the light of past experience, that such a proposal would receive sufficient support from this Board and the R E A stockholders to insure that a satisfactory working agreement between R E A and Greyhound would be possible. Mr. Ackerman stated that he would look favorably upon a firm offer from R E A consistent with the terms set forth in the resolution of July 28, 1964 if it were adopted by such a substantial vote of the R E A Board and stockholders as to carry some measure of assurance that a constructive working relationship could be developed.

The President stated that in the opinion of the management of R E A it would be greatly in the interest of R E A to sell to The Greyhound Corporation 500,000 shares of authorized but unissued stock and to enter into working arrangements with Greyhound which would result in substantial savings for R E A and improved service to the public.

Accordingly, the President recommended that R E A offer to sell to The Greyhound Corporation 500,000 shares [fol. 159] of authorized but unissued stock of R E A at a price of $20.00 per share. The President also suggested that certain amendments to the By-Laws and certain resolutions of this Board should be enacted in order that the offer might be acceptable to Greyhound. The President therefore suggested that the Board adopt an appropriate resolution authorizing the President or any Vice President of this corporation to make a firm offer along the foregoing lines to The Greyhound Corporation.

Thereupon, on motion, duly made and seconded, the following resolution was duly adopted:

> RESOLVED, that the President or any Vice President of this corporation be, and he hereby is, authorized in the name and on behalf of this corporation to execute

and deliver to the Greyhound Corporation a firm offer to sell to The Greyhound Corporation 500,000 shares of authorized but unissued common stock of this corporation at the price of $20 per share, upon the following terms and conditions:

(a) The R E A By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the R E A Board of Directors.

(b) The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

[fol. 160] (d) The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the general public if and when conditions appear favorable to the best interests of R E A as a company.

(e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of R E A from present shareholders at a price of $20.00 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the trans-

action involving the 500,000 authorized unissued shares of R E A.

(f) The offer of R E A shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of R E A may be accepted immediately, subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

The President then suggested that the Board adopt an appropriate resolution recommending to its railroad stockholders that they approve the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and that the Board adopt such further resolutions as may be necessary to consummate the transactions contemplated by said offer, subject to all necessary approvals of the stockholders of this corporation and of the Interstate Commerce Commission. Thereupon, upon motion, duly made and seconded, the following resolution was adopted:

[fol. 161] RESOLVED, that this Board of Directors recommends to the stockholders of this corporation that they approve the issuance to The Greyhound Corporation pursuant to the offer set forth in the next preceding resolution of 500,000 shares of authorized by unissued common stock of this corporation.

The President then stated that in order to comply with the condition mentioned in paragraph (a) of the proposed offer, it would be necessary for the By-Laws of this corporation to be amended. He suggested to the Board of

Directors that the most feasible way to comply with such condition would be for the number of Directors-At-Large to be increased from five to seven and to permit the nomination of five such directors by The Greyhound Corporation, subject to said corporation holding at least 20% of the issued and outstanding stock. He stated that it would be preferable to phrase such amendment so that it relates to bus company holders generally rather than Greyhound specifically. The President further stated that it would be necessary to call a special meeting of the stockholders in order to approve the issuance by this corporation of the 500,000 shares of stock of this corporation to be issued to Greyhound, and to amend the By-Laws in accordance with the terms of the offer.

Thereupon, after full discussion and upon motion, duly made and seconded, the following resolutions were adopted:

RESOLVED, that this Board of Directors recommends to the stockholders of this corporation that, effective upon acceptance of the foregoing offer by The Greyhound Corporation, the By-Laws of this corporation be amended as follows:

[fol. 162] A. Section 2 of Article II of the By-Laws of this corporation shall be amended so as to read in its entirety as follows:

"An annual meeting of stockholders shall be held on the first Wednesday of April in each year at eleven o'clock A.M., at which meeting there shall be elected by ballot a Board of Directors, not to exceed twenty-five in number. There may be seven Directors-At-Large, and the others shall be the persons nominated by districts as provided in Section 8 of this Article; provided, however, that if at any time any corporation or corporations engaged in whole or in part in the common carriage of passengers by bus (hereinafter called Bus

Company Stockholders) are the holders of at least 20% of the stock issued and outstanding, the Bus Company Stockholders shall be entitled to nominate five of the Directors-At-Large in the manner provided in the next succeeding paragraph. The number, not to exceed eighteen, so nominated by districts shall be determined as provided in said Section 8. At such meeting there shall be transacted such other business as may properly be brought before the meeting.

"Not more than thirty nor less than fifteen days prior to the date of the annual meeting of stockholders, the Secretary of the Corporation shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, send to each Bus Company Stockholder a form of vote for the number of and for nominations for five Directors-At-Large. Each Bus Company Stockholder receiving the same shall thereupon name the persons proposed by such Bus Company Stockholder as nominees for five Directors-At-Large and return such vote to the Secretary with a statement of the number of shares voted by such Bus Company Stockholder in favor of each such nominee. Each Bus Company Stockholder shall be entitled to the same number of nominating votes for each of its said nominees for directors as the number of shares of stock [fol. 163] which such Bus Company Stockholder will be entitled to vote at such annual meeting. The Secretary shall canvass the nominating votes of the Bus Company Stockholders received by him prior to such annual meeting and shall report the same to the stockholders at the meeting. The five nominees

receiving the most nominating votes shall be the nominees for the five Directors-At-Large to be nominated by the Bus Company Stockholders."

B. Article XI of the By-Laws of this corporation shall be amended by deleting the period at the end thereof and adding an additional proviso at the end of said Article XI reading as follows:

"; and provided further that if any such alteration or amendment be made in the number of Directors of this corporation or in the method of nominating Directors-At-Large of this corporation, said affirmative vote of two-thirds of the stock issued and outstanding and entitled to a vote shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, include a majority of the issued and outstanding stock held by the Bus Company Stockholders."

RESOLVED, that a special meeting of the stockholders of this corporation (hereinafter in these resolutions sometimes called the Meeting) be, and it hereby is, called to be held at the office of this corporation, 219 East 42nd Street, New York, New York, at 10 A.M., Eastern Daylight Time, on October 1, 1964, to consider and vote upon the following:

(1) the proposed amendments to the By-Laws of this corporation recommended by the Board of Directors in the next preceding resolution (hereinafter called the By-Law Amendments);

(2) the approval of the issuance by this corporation of the 500,000 shares of capital stock of this corporation to be issued to The Greyhound Corporation as contemplated by the offer of R E A to the

Greyhound Corporation approved at this meeting (hereinafter called the Stock Approval); and

(3) to transact such other business as may properly come before the meeting or any adjournment thereof;

[fol. 164] RESOLVED, that Messrs. Frank E. Barnett, Fred Capri, Prime F. Osborn and William B. Johnson, or any of them, with full power of substitution, be, and they hereby are, appointed as a Proxy Committee to act on behalf of and represent such stockholders of this corporation as may appoint them their proxy to act for them at the Meeting and at any adjournment thereof;

RESOLVED, that the Secretary of this corporation be, and he hereby is, authorized and directed to give written notice of the Meeting, not less than 10 days before the day fixed for the Meeting, to each stockholder of this corporation entitled to vote at the Meeting, by mailing or causing to be mailed a copy of such notice in a postage prepaid envelope addressed to such stockholder at his post-office address as such address shall appear on the books of this corporation;

RESOLVED, that the Secretary of this corporation be, and he hereby is, authorized and directed to enclose or cause to be enclosed with each such notice to be mailed as provided in the next preceding resolution, copies of a Proxy Statement and Proxy in such form as shall be approved by the President or any Vice President of this corporation; and

RESOLVED, that Messrs. C. D. Vannoy and Alan F. Doniger be, and they hereby are, appointed Judges to conduct at the Meeting a vote of the holders of the capital stock of this corporation for and against the By-Law Amendments, the Stock Approval, and any

other vote taken by ballot at the Meeting and that such Judges in the exercise of the authority vested in them by the laws of the State of Delaware shall decide upon the qualifications of the voters and accept the votes of those qualified to vote for or against the By-Law Amendments and the Stock Approval, and when the vote thereon shall have been completed, count and ascertain the number of shares voted, respectively, for and against the By-Law Amendments and the Stock Approval, and declare whether the persons or bodies corporate holding two-thirds of the capital stock of this corporation entitled to vote thereon have voted for the By-Law Amendments and the Stock Approval, and make out a certificate stating (i) the number of shares of capital stock issued and outstanding and entitled to vote on the By-Law Amendments and the Stock Approval and (ii) the number of shares of capital stock voted for, and the number thereof voted against, the By-Law Amendments and the Stock Approval, respectively, and subscribe and deliver said certificate to the Secretary of this corporation.

[fol. 165] The President then stated that in order to comply with the condition referred to in Paragraph (6) of the R E A offer it would be necessary for this Board to adopt a resolution declaring the intention of refinancing, if necessary, its 5% notes, outstanding in the principal amount of $27,637,054, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends referred to in such notes.

Thereupon, after discussion, on motion, duly made, seconded and carried, the following resolution was duly adopted:

RESOLVED, that upon acceptance of the offer by The Greyhound Corporation, Messrs. William B. Johnson, President, and C. D. Vannoy, Vice President and Treasurer of the company, be, and they hereby are,

authorized to explore the possibility of refinancing the $27,637,054 principal amount of outstanding 5% notes, issued originally to this corporation's stockholders, or otherwise securing the waiver or cancellation of the prohibition against the payment of dividends which is contained in said notes; and upon the submission by such officers to this Board of a satisfactory program, this Board will take all such further action as may be necessary.

The President then stated that in order to comply with the condition referred to in Paragraph (c) of the R E A offer it would be necessary for the Board to declare its intention to work toward a long-term agreement between this corporation and Greyhound to consolidate operating functions and facilities.

Thereupon, upon full discussion and motion, duly made and seconded, the following resolution was duly adopted:

RESOLVED, that upon acceptance of the offer by The Greyhound Corporation, the President and any Vice Presidents whom he may designate are hereby authorized to undertake the negotiation of a long-term agreement with The Greyhound Corporation encompassing the consolidating of operating functions and [fol. 166] facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage; and upon the submission by the proper officers of this corporation to this Board of a satisfactory agreement, this Board will take all such further action as may be necessary to approve the same.

The President then said that in order to comply with the condition contained in Paragraph (d) of the R E A offer it would be necessary for the Board to adopt a resolution declaring its intention to consider seriously at some

time the sale of some of the stock of this corporation to airlines and/or the general public.

Thereupon, upon motion, duly made and seconded, the following resolution was duly adopted:

> RESOLVED, that, upon acceptance of the R E A offer by The Greyhound Corporation, if and when the conditions appear favorable to the best interests of this corporation, the President is authorized and directed to submit to this Board of Directors a program pursuant to which airlines and/or the general public could acquire interests in the stock of this corporation; and, upon receipt of such a recommendation, this Board will consider seriously a program of such nature.

The President then stated that it would be appropriate for the Board to adopt appropriate resolutions authorizing the filing of the necessary applications with the Interstate Commerce Commission for the necessary authorizations to consummate the transaction and authorizing the taking of all other action necessary for the consummation thereof.

Thereupon, upon motion, duly made and seconded, the following resolutions were duly adopted:

> RESOLVED, that William B. Johnson, President, and C. D. Vannoy, Vice President and Treasurer, be and they hereby are, and each of them individually hereby is designated and authorized as the executive officer to [fol. 167] make, sign, verify and file an application to the Interstate Commerce Commission under Sections 20a and 214 of the Interstate Commerce Act for authority to issue and deliver to The Greyhound Corporation 500,000 shares of this corporation's authorized and unissued common stock and for such other authority as may be necessary to effectuate the foregoing resolutions; and

RESOLVED, that the proper officers of this corporation be, and they hereby are, authorized to pay all such costs and expenses, and to take any and all other action and to execute, under the corporate seal of this corporation or otherwise, and deliver all such further instruments and documents as they in their discretion may deem necessary, proper or advisable in order to accomplish the purposes of the foregoing resolutions and each of them.

[fol. 168] Annex B

RAILWAY EXPRESS AGENCY, INCORPORATED

Notice of Special Meeting of Stockholders to be Held October 1, 1964

PLEASE TAKE NOTICE that by order of the Board of Directors a special meeting of stockholders of RAILWAY EXPRESS AGENCY, INCORPORATED, a Delaware corporation (hereinafter called the Corporation), will be held on Thursday, October 1, 1964, at 10 o'clock a.m., Eastern Daylight Time, at the office of the Corporation, 219 East 42nd Street, New York, N. Y., 10017, for the following purposes:

(1) to consider and act upon a proposal to approve the issuance by the Corporation of 500,000 shares of its authorized but unissued shares of Common Stock to The Greyhound Corporation, all as set forth more fully in Proposal No. 1 in the enclosed Proxy Statement;

(2) to consider and act upon a proposal to amend the By-Laws of the Corporation to increase the number of members of the Board of Directors from 23 to 25, to increase the number of Directors-At-Large from five to seven, to provide for the nomination of five Directors-At-Large by stockholders holding at least 20% of the issued and outstanding stock of the Corpo-

ration who are engaged in the common carriage of passengers by bus and to provide for a vote by such bus company stockholders upon certain amendments [fol. 169] to the By-Laws, all as set forth more fully in Proposal No. 2 in the enclosed Proxy Statement; and

(3) to transact such other business as may properly come before the meeting or any adjournment thereof.

ANY STOCKHOLDER WHO DOES NOT EXPECT TO ATTEND THE MEETING IN PERSON AND WHO WISHES TO VOTE UPON THE PROPOSALS REFERRED TO IN THE ENCLOSED PROXY STATEMENT IS RESPECTFULLY REQUESTED PROMPTLY TO INDICATE IN THE BOX NEXT TO EACH PROPOSAL WHETHER SUCH STOCKHOLDER DESIRES TO HAVE HIS SHARES VOTED FOR OR AGAINST SUCH PROPOSAL, DATE AND SIGN THE ACCOMPANYING PROXY AND RETURN THE PROXY IN THE ACCOMPANYING REPLY ENVELOPE.

BY ORDER OF THE BOARD OF DIRECTORS

Lawrence Berman,
Secretary

Dated: New York, N.Y., September 1, 1964.

[fol. 170] Annex B

RAILWAY EXPRESS AGENCY, INCORPORATED
219 East 42nd Street
New York, N.Y. 10017

PROXY STATEMENT

Pursuant to a resolution of the Board of Directors, this Proxy Statement has been prepared for use in connection with the delivery of Proxies for the special meeting of

stockholders of Railway Express Agency, Incorporated (hereinafter called the Corporation) to be held on Thursday, October 1, 1964, at 10 a.m., Eastern Daylight Time, at the offices of the Corporation, 219 East 42nd Street, New York, N. Y., for the purposes set forth in the accompanying Notice of such meeting. Stockholders will find enclosed a form of Proxy for use in connection with such special meeting. Shares represented by each properly signed Proxy received will be voted at the meeting in the manner indicated in such Proxy. Any Proxy is revocable at any time before the voting of such Proxy. Each share of the Corporation's Common Stock, par value $1 per share, issued and outstanding on said date is entitled to one vote on each matter to come before the meeting.

PURPOSE

The purpose of the special meeting is to consider recommendations by the Board of Directors (a) to authorize the issuance to The Greyhound Corporation (hereinafter [fol. 171] called Greyhound) of 500,000 shares of the corporation's authorized but unissued shares of Common Stock and (b) to amend the By-Laws of the Corporation. The proposed issuance of such shares of Common Stock to Greyhound would allow Greyhound to acquire an equity interest in the Corporation pursuant to the offer described below. The proposed amendments to the By-Laws are deemed necessary to comply with the terms of such offer.

THE GREYHOUND PROPOSAL

Some time ago, representatives of Greyhound approached the management of the Corporation to discuss the possibility of obtaining an equity interest in the Corporation with the ultimate purpose of achieving certain economies which could be realized through combination and correlation of certain of the facilities and services of Greyhound and the Corporation. During the last few months your management has had several discussions with Greyhound

officials as to an acceptable form of participation by Greyhound in the Corporation. As a result of such discussions, the Board of Directors of the Corporation, at its meeting on September 1, 1964, authorized the management of the Corporation to make an offer to Greyhound pursuant to which (i) the Corporation would sell to Greyhound 500,000 shares of the Corporation's authorized but unissued Common Stock at $20 per share and (ii) Greyhound would offer to purchase from the stockholders of the Corporation up to 1,000,000 shares of the Corporation's Common Stock at $20 per share. The offer of the Corporation is subject to [fol. 172] necessary approvals by the stockholders of the Corporation and by the Interstate Commerce Commission and is also subject to certain other conditions, all as set forth in the following resolution adopted by the Board of Directors of the Corporation on September 1, 1964:

> RESOLVED, that the President or any Vice President of this Corporation be, and he hereby is, authorized in the name and on behalf of this Corporation to execute and deliver to The Greyhound Corporation a firm offer to sell to The Greyhound Corporation 500,000 shares of authorized but unissued Common Stock of this Corporation at the price of $20 per share, upon the following terms and conditions:
>
> (a) The R E A By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the R E A Board of Directors.
>
> (b) The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.
>
> (c) The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A

and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

(d) The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the general public if and when conditions appear favorable to the best interests of R E A as a company.

[fol. 173] (e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the Common Stock of R E A from present shareholders at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of R E A.

(f) The offer of R E A shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of R E A may be accepted immediately, subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this Corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued Common Stock of this Corporation and (ii) the amendments to the By-Laws of this Corporation required by subparagraph (a) of said offer.

The Board at said meeting also adopted appropriate resolutions to comply with the conditions set forth in subparagraphs (b), (c) and (d) of the foregoing resolution and further adopted resolutions recommending to the

stockholders that they (A) approve the issuance to Greyhound of 500,000 shares of Common Stock of the Corporation pursuant to the offer and (B) authorize the amendments to the By-Laws contemplated by the conditions set forth in subparagraph (a) of the foregoing resolution. The Board further called a special meeting of stockholders to be held on Thursday, October 1, 1964, at the offices of the Corporation, 219 East 42nd Street, New York, N.Y., to consider and act upon the following two Proposals providing for such approval and authorization. Although the management of the Corporation is not in a position to assure acceptance of the Corporation's offer by Greyhound, [fol. 174] if said proposals are adopted by a substantial vote of the stockholders of the Corporation, your management believes that the offer will receive favorable consideration by Greyhound.

The members of the Board present at the meeting at which the above action was taken and their affiliations were as follows:

Mr. Eaton Adams, Chicago, Rock Island & Pacific Railroad Company
Mr. T. M. Caiazza, The Atchison, Topeka and Santa Fe Railway Company
Mr. Fred Carpi, The Pennsylvania Railroad Company
Mr. Owen Clarke, The Chesapeake and Ohio Railway Company
Mr. F. J. Conrad, Missouri Pacific Railroad Company
Mr. G. W. Glenn, of the firm of Lord, Day and Lord
Mr. W. L. Grubbs, Louisville & Nashville Railroad Company
Mr. Covington Hardee, Union Pacific Railroad Company
Mr. C. J. Henry, Jr., The Baltimore and Ohio Railroad Company
Mr. W. M. Hoffman, The New York Central Railroad Company
Mr. W. B. Johnson, R E A Express

Mr. W. A. Johnston, Illinois Central Railroad Company
Mr. W. V. Lawrence, Seaboard Air Line Railroad Company
Mr. M. G. McInnes, Erie-Lackawanna Railroad Company
Mr. E. S. Miller, Maine Central Railroad Company
Mr. H. C. Murphy, Chicago, Burlington & Quincy Railroad Company
Mr. P. F. Osborn, Atlantic Coast Line Railroad Company
Mr. W. G. Peoples, Southern Pacific Company

All members present voted in the affirmative with the exception of Messrs. Caiazza, Conrad and Peoples who voted in the negative and Mr. Murphy who abstained.

PROPOSAL NO. 1:
APPROVAL OF STOCK ISSUANCE

Pursuant to the offer to Greyhound authorized by the Board of Directors on September 1, 1964, the Corporation [fol. 175] proposes to issue to Greyhound 500,000 shares of the Corporation's authorized but unissued shares of Common Stock. Stockholder approval of such issuance is required because the following resolution was adopted by the stockholders of the Corporation at a special meeting on September 17, 1962:

> Resolved that, if the stockholders of this Corporation approve at this meeting the proposals referred to in items 1 and 2 of the Notice dated August 1, 1962, of this Special Meeting of Stockholders, none of the 500,000 shares of authorized but unissued shares of Common Stock of this Corporation remaining after the reclassification referred to in item 1 of said Notice shall have been effected shall be issued by this Corporation unless such issuance is first approved by the

holders of at least two-thirds of this Corporation's Capital Stock issued and outstanding, such approval to be evidenced by vote of such stockholders at a duly held meeting of stockholders or by the consent in writing of such stockholders; and that any approvals at this meeting of such proposals set forth in items 1 and 2 of said Notice be subject to the ratification of this resolution by the Board of Directors of this Corporation by vote of at least a majority of all the Directors of this Corporation.

Accordingly, as Proposal No. 1, the Board recommends that the stockholders of the Corporation adopt the following resolution:

RESOLVED, that, subject to all necessary Interstate Commerce Commission authorizations, the stockholders of this Corporation approve the issuance by this Corporation to The Greyhound Corporation of 500,000 shares of authorized but unissued shares of Common Stock of this Corporation in accordance with the offer of this Corporation to The Greyhound Corporation authorized by the Board of Directors of this Corporation at its meeting on September 1, 1964.

The favorable vote of the holders of at least two-thirds of the Corporation's Common Stock issued and outstanding and entitled to vote will be required to approve such stock issuance.

[fol. 176] *The Board of Directors Recommends that the Stockholders Vote for the Approval of Stock Issuance Set Forth Above in Proposal No. 1.*

PROPOSAL NO. 2:
AMENDMENT OF THE BY-LAWS

The present number of directors of the Corporation is 23 and the number of Directors-At-Large is five. In order

to comply with the condition of the offer of this Corporation to Greyhound that Greyhound can name 20% of the Board of Directors of the Corporation, it is proposed that the number of members of the Board of Directors be increased from 23 to 25 and that the number of Directors-At-Large be increased from five to seven. It is further proposed that five Directors-At-Large be nominated by stockholders holding 20% of the issued and outstanding stock of the Corporation who are engaged in whole or in part in the common carriage of passengers by bus and that provision be made to require the approval of a majority of the Corporation's stock held by such bus company stockholders for any alteration or amendment in the number of directors of the Corporation or in the method of nominating Directors-At-Large of the Corporation authorized by the stockholders.

Accordingly, as Proposal No. 2, the Board recommends that the stockholders of this Corporation adopt the following resolution:

> RESOLVED, that, subject to the acceptance by The Greyhound Corporation of the offer of this Corporation to The Greyhound Corporation authorized by the Board of Directors of this Corporation at its meeting on September 1, 1964, the stockholders of this Corpo- [fol. 177] ration hereby amend the By-Laws of this Corporation (i) to increase the number of members of the Board of Directors from 23 to 25, (ii) to increase the number of Directors-At-Large from five to seven, (iii) to provide for the nomination of five Directors-At-Large by stockholders holding at least 20% of the issued and outstanding stock of this Corporation who are engaged in whole or in part in the common carriage of passengers by bus, and (iv) to provide for a vote by such bus company stockholders upon certain amendments to the By-Laws of this Corporation, said amendment of the By-Laws to be effected by

A. Deleting Section 2 of Article II of the By-Laws of this Corporation and substituting therefor the following:

"An annual meeting of stockholders shall be held on the first Wednesday of April in each year at eleven o'clock A.M., at which meeting there shall be elected by ballot a Board of Directors, not to exceed twenty-five in number. There may be seven Directors-At-Large, and the others shall be the persons nominated by districts as provided in Section 8 of this Article; provided, however, that if at any time any corporation or corporations engaged in whole or in part in the common carriage of passengers by bus (hereinafter called Bus Company Stockholders) are the holders of at least 20% of the stock issued and outstanding, the Bus Company Stockholders shall be entitled to nominate five of the Directors-At-Large in the manner provided in the next succeeding paragraph. The number, not to exceed eighteen, so nominated by districts shall be determined as provided in said Section 8. At such meeting there shall be transacted such other business as may properly be brought before the meeting.

"Not more than thirty nor less than fifteen days prior to the date of the annual meeting of stockholders, the Secretary of the Corporation shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, send to each Bus Company Stockholder a form of vote for the number of and for nominations for five Directors-At-Large. Each Bus Company Stockholder receiving the same shall thereupon name the persons proposed by such Bus Company Stockholder as

nominees for five Directors-At-Large and re-
[fol. 178] turn such vote to the Secretary with a statement of the number of shares voted by such Bus Company Stockholder in favor of each such nominee. Each Bus Company Stockholder shall be entitled to the same number of nominating votes for each of its said nominees for directors as the number of shares of stock which such Bus Company Stockholder will be entitled to vote at such annual meeting. The Secretary shall canvass the nominating votes of the Bus Company Stockholders received by him prior to such annual meeting and shall report the same to the stockholders at the meeting. The five nominees receiving the most nominating votes shall be the nominees for the five Directors-At-Large to be nominated by the Bus Company Stockholders."

B. Deleting the period at the end of Article XI of said By-Laws and adding an additional proviso at the end thereof reading as follows:

"; and provided, further that if any such alteration or amendment be made in the number of Directors of this Corporation or in the method of nominating Directors-At-Large of this Corporation, said affirmative vote of two-thirds of the stock issued and outstanding and entitled to a vote shall, if Bus Company Stockholders hold at least 20% of the issued and outstanding stock, include a majority of the issued and outstanding stock held by the Bus Company Stockholders."

The favorable vote of the holders of at least two-thirds of the Corporation's Common Stock issued and outstanding and entitled to vote will be required to authorize the

adoption of the proposed amendments to the By-Laws of the Corporation.

The Board of Directors Recommends that the Stockholders Vote For the Proposed Amendments of the By-Laws Set Forth Above in Proposal No. 2.

OTHER BUSINESS

The management does not intend to bring before the meeting any matters other than those set forth above, and [fol. 179] has no present knowledge that any other matters will or may be brought before the meeting by others. It is not intended that the persons named in the enclosed Proxy will vote Proxies in any way or on any matter other than as specifically indicated on such Proxies.

YOU ARE REQUESTED PROMPTLY TO INDICATE IN THE BOX NEXT TO EACH PROPOSAL WHETHER YOU DESIRE TO HAVE YOUR SHARES VOTED FOR OR AGAINST SUCH PROPOSAL, DATE AND SIGN THE ACCOMPANYING PROXY AND RETURN THE PROXY PROMPTLY SO THAT IT WILL BE AVAILABLE FOR USE AT THE MEETING.

BY ORDER OF THE BOARD OF DIRECTORS

Lawrence Berman,
Secretary

Dated: New York, N.Y., September 1, 1964.

[fol. 180] Annex B

RAILWAY EXPRESS AGENCY, INCORPORATED

Proxy for Special Meeting of Stockholders to be Held on October 1, 1964

KNOW ALL MEN BY THESE PRESENTS: That the undersigned stockholder of RAILWAY EXPRESS AGENCY, INCORPORATED, a Delaware corporation (hereinafter called the Corporation), does hereby name, constitute and appoint

FRANK E. BARNETT,
FRED CARPI,
PRIME F. OSBORN and
WILLIAM B. JOHNSON

or any of them, attorneys, agents and proxies for and in the name, place and stead of the undersigned, to appear and vote, according to the number of votes to which the undersigned shall be entitled, at the special meeting of stockholders of the Corporation, to be held Thursday, October 1, 1964, at ten o'clock, a.m., Eastern Daylight Time, at the office of the Corporation, 219 East 42nd Street, New York, N. Y., 10017, or at any adjournment thereof; with full power of revocation and substitution; and to vote:

☐ For

☐ Against

1. The proposal to approve the issuance to The Greyhound Corporation of 500,000 shares of the Corporation's authorized but unissued shares of Common Stock, as set forth in Proposal No. 1 in the Proxy Statement dated September 1, 1964.

[fol. 181]

☐ For

☐ Against

2. The proposal to amend the By-Laws of the Corporation as set forth in Proposal No. 2 in the Proxy Statement dated September 1, 1964.

At such meeting the said attorneys, agents and proxies shall have all the powers which the undersigned would have if personally present at such meeting and the undersigned hereby ratifies and confirms all that said attorneys, agents and proxies, their substitutes, or any of them, shall lawfully do by virtue hereof.

The said attorneys, agents and proxies, or their substitutes, are not authorized to vote this proxy with respect to the above-mentioned Proposals if no instruction is indicated in this proxy.

IN WITNESS WHEREOF, the undersigned stockholder has caused this proxy to be executed this day of , 1964.

.....
(Name of Stockholder)

by .....

.....
(Official Title)

Return to LAWRENCE BERMAN, Secretary, Railway Express Agency, Incorporated, 219 East 42nd Street, New York, N. Y. 10017.

For the past 10 years, for each item submitted to vote to the stockholders, furnish the following:

Item and date submitted to stockholders*:	a. The total outstanding voting power at the time:	b. The total number of shares voted:	c. The total number of shares which were not voted:	d. What percent of the stock was needed to approve the items voted o
4/6/55	1,000	998	2	more than 50
4/4/56	999	998	1	more than 50
4/3/57	999	981	18	more than 50
4/2/58	999	994	5	more than 50
4/1/59	998	997	1	more than 50
'6/60	965	958	7	more than 50
4/6/60 (proposition No. 1)	965	958	7	66-2/3
4/5/61	965	948	17	more than 50
4/5/61 (proposition No. 1)	965	948	17	66-2/3
4/4/62	963	939	24	more than 50
9/17/62 (proposition No. 1)	963	874	89	more than 50
9/17/62 (proposition No. 2)	963	874	89	more than 50
9/17/62 (proposition No. 3)	963	874	89	66-2/3
4/3/63	1,999,188	1,997,112	2,076	more than 50
4/1/64	1,999,188	1,990,884	8,304	more than 50

[fol. 182]

* On all dates, except as indicated, the only item before the stockholders as the election of directors.

For each board of directors meeting during the past 5 years, indicate:

Date of Bd. Mtg.	a. the Number of Directors Present	b. the Number of Directors Absent	c. the Number of Vacancies	d. the Number of Directors Constituting a Quorum	e. the Number of Affirmative Votes Necessary to Carry a Resolution
11/24/59	15	1	None	9	8
1/7/60	17	None	"	9	9
2/23/60	15	2	"	9	8
3/22/60	16	1	"	9	9
5/3/60	16	1	2	9	9
6/7/60	15	2	2	9	8
8/2/60	17	None	2	9	9
10/4/60	13	3	3	9	7
11/1/60	16	1	2	9	9
12/13/60	14	3	2	9	8
1/19/61	15	2	2	9	8
3/7/61	14	2	3	9	8
4/4/61	17	None	2	9	9
5/2/61	16	1	3	9	9
6/6/61	15	2	3	9	8
8/1/61	17	None	3	9	9
9/12/61	14	3	3	9	8
9/22/61	16	1	3	9	9
11/7/61	17	1	2	10	9
12/5/61[a]	16	2	2	10	9
2/6/62	15	3	2	10	8

[a] One item presented to the Board required and received approval by at least 3/4 of the Board members nominated by the rail companies or 12 railroad nominated directors.

[fol. 184]

Date of Bd. Mtg.	a. the Number of Directors Present	b. the Number of Directors Absent	c. the Number of Vacancies	d. the Number of Directors Constituting a Quorum	e. the Number of Affirmative Votes Necessary to Carry a Resolution
3/6/62	16	2	2	10	9
5/1/62	17	1	2	10	9
6/5/62	17	1	2	10	9
7/17/62	18	None	2	10	10
9/6/62	16	2	2	10	9
10/2/62	16	2	5	10	9
12/4/62	17	1	5	10	9
2/5/63	14	4	5	10	8
3/5/63	12	6	5	10	7
5/7/63	17	1	5	10	9
6/11/63	16	2	5	10	9
7/23/63	17	1	5	10	9
9/5/63	15	3	5	10	8
10/9/63	16	2	5	10	9
11/5/63	15	3	5	10	8
12/3/63	13	5	5	10	7
2/4/64	15	3	5	10	8
3/3/64	18	None	5	10	10
4/7/64	16	2	5	10	9
6/9/64	17	1	5	10	9
7/7/64	18	None	5	10	10
7/28/64	20	"	3	11	11
9/1/64	18	2	3	11	10
10/6/64	19	1	3	11	10

[fol. 185] Annex E

[Letterhead of R E A EXPRESS, New York, N. Y.]

October 27, 1964

Mr. Gerald H. Trautman, Esq.
Office of the General Counsel
The Greyhound Corporation
601 California Street
San Francisco, California

Dear Mr. Trautman:

The Interstate Commerce Commission, by George W. Metzger, Chief, Section of Proceedings, has promulgated certain questions in connection with the Application of this company in Finance Docket No. 23324.

This company is not able to make full and complete answers to four of the questions as certain of the information is solely within the knowledge of the management of The Greyhound Corporation. Specifically, the questions are as follows (the numbers correspond with the numbers given by the ICC):

"5. Are there any existing interlocking directors between Greyhound, its affiliates and subsidiaries, on the one hand, and REA, its affiliates and subsidiaries, on the other hand? If so, please identify.

"6. Is it contemplated or anticipated that Greyhound will dispose of any of the REA stock to any of its, Greyhound's, affiliates or subsidiaries?

"7. Are there any commitments by any of present REA stockholders to sell their holdings to Greyhound? If so, give details.

"8. After giving effect to the proposed transaction and the election of the so-called 'Greyhound Directors,' [fol. 186] identify, by name and business affiliation, each of the 25 directors."

I have been informed that question No. 5 has been amended by the Commission to read as follows (new wording italicized:

"5. Are there any existing interlocking directors between Greyhound, its affiliates and subsidiaries on the one hand and REA, its affiliates and subsidiaries *and the owning railroads, their subsidiaries and affiliates* on the other hand? If so, please identify."

In answer to question No. 5, this company, at the present time, has no knowledge of any existing interlocking directors. In answer to question No. 6, this company has no knowledge of what Greyhound contemplates in regard to the disposition of the R E A stock to any of Greyhound's affiliates or subsidiaries. In answer to question No. 7 R E A has no knowledge as to any commitments by any present R E A stockholder to sell their holdings to Greyhound.

In regard to question No. 8, I am able at the present time to list only the 20 present directors of this company as this company has no knowledge as to the identity and business affiliation of the so-called "Greyhound Directors" in the event the proposed transaction is consummated.

I would appreciate your supplying me with any and all information which will enable R E A to fully answer questions numbered 5, 6, 7 and 8.

Sincerely,

Original Signed
LAWRENCE BERMAN
Corporate Secretary

bc: Mr. Henry P. Riordan
WJT

[fol. 187] Annex E

THE GREYHOUND CORPORATION

140 South Dearborn Street
Chicago 3, Illinois

OFFICE OF THE GENERAL COUNSEL
601 California Street
San Francisco, California October 31, 1964

AIR MAIL

Mr. Lawrence Berman
Corporate Secretary
Railway Express Agency,
Incorporated
219 East 42nd Street
New York, New York 10017

Railway Express Agency, Incorporated
Application—ICC Finance Docket No. 23324

Dear Mr. Berman:

This will acknowledge your letter of October 27, 1964, inquiring as to the answers to certain questions posed by Mr. George W. Metzger, Chief, Section of Proceedings, Interstate Commerce Commission. The answers to those questions are as follows:

Question 5 as revised. There are no existing interlocking directors between Greyhound, its affiliates and subsidiaries, on the one hand, and R E A, its affiliates and subsidiaries and the owning railroads, their affiliates and subsidiaries, on the other hand.

Question 6. It is not contemplated or anticipated that The Greyhound Corporation will dispose of any of the R E A stock to any of its affiliates or subsidiaries.

Question 7. There are no commitments by any of the present R E A stockholders to sell their holdings to Greyhound.

Question 8. It is contemplated that the Greyhound directors on the R E A Board would be as follows:

[fol. 188] F. W. Ackerman, President and Chairman of the Board of The Greyhound Corporation and an officer and director of several other corporations.

Frederick L. Ehrman, partner, Lehman Brothers, and an officer and director of several other corporations.

Arthur M. Hill, Chairman of the Executive Committee of The Greyhound Corporation, member of the Executive Committee and director of the International Telephone and Telegraph Corporation, as well as an officer and director of other corporations.

T. S. Peterson, former President of Standard Oil Company of California, member of the Board of Directors of The Greyhound Corporation, and an officer and director of several other corporations.

Raymond F. Shaffer, Executive Vice President of The Greyhound Corporation and an officer and director of certain other corporations.

I trust that this information will enable you to comply with Mr. Metzger's request.

Very sincerely yours,

/s/ Gerald H. Trautman
Gerald H. Trautman

Annex F

[fol. 189] *After giving effect to the proposed transaction and the election of the so-called "Greyhound Directors", identify, by name and business affiliation, each of the 25 directors.*

Name	*Business Affiliation*
A. *Eastern District Directors:*	
Fred Carpi	Vice President-Traffic, The Pennsylvania Railroad Co.
Owen Clarke	Vice President, The Chesapeake & Ohio Railway Company
Garrard W. Glenn	Member of the law firm of Lord, Day & Lord
Charles J. Henry, Jr.	Vice President-Marketing, The Baltimore and Ohio Railroad Company
Wayne M. Hoffman	Executive Vice President, The New York Central RR Co.
Milton G. McInnes	Vice President-Staff, Erie-Lackawanna Railroad Company
E. Spencer Miller	President, Maine Central Railroad Co.
B. *Western District Directors:*	
Frank E. Barnett	Vice President & General Counsel, Union Pacific Railroad Company
Theodore M. Caiazza	Assistant Vice President-Traffic, The Atchison, Topeka & Santa Fe Railway Co.

Name	*Business Affiliation*
Frank J. Conrad	Vice President-Traffic, Missouri Pacific Railroad Co.
R. Ellis Johnson	President, Chicago, Rock Island and Pacific Railroad Co.
Harry C. Murphy	President & Chairman of Executive Committee, Chicago, Burlington & Quincy Railroad Co.
William G. Peoples	Vice President-Traffic, Southern Pacific Company

[fol. 190]

C. *Southern District Directors:*

William L. Grubbs	Vice President & General Counsel, Louisville and Nashville RR Co.
Robert S. Hamilton	Vice President-Marketing & Research, Southern Railway Co.
Wayne A. Johnston	President, Illinois Central Railroad Co.
Prime F. Osborn	Vice President & General Counsel, Atlantic Coast Line Railroad Co.
James R. Thorne	Executive Vice President, Seaboard Air Line Railroad Co.

Name	*Business Affiliation*
D. *Directors-at-large:*	
William B. Johnson	President, Railway Express Agency, Incorporated
C. E. Woolman	President, Delta Air Lines
E. *Greyhound Directors:*	
F. W. Ackerman	President and Chairman of the Board, The Greyhound Corporation; officer and director of several other corporations
Frederick L. Ehrman	Member of the investment banking firm of Lehman Brothers; officer and director of several other corporations
Arthur M. Hill	Chairman of the Executive Committee of The Greyhound Corporation; member of the Executive Committee and director of International Telephone and Telegraph Corporation; officer and director of several other corporations
T. S. Peterson	Former President of Standard Oil Company of California; director of The Greyhound Corporation; officer and director of several other corporations
Raymond F. Shaffer	Executive Vice President of The Greyhound Corporation; officer and director of several other corporations

[fol. 191] Annex G

MEMORANDUM OF UNDERSTANDING REACHED BY R. F. SHAFFER, EXECUTIVE VICE PRESIDENT, GREYHOUND LINES, INC. AND TRUMAN T. MOORE, VICE PRESIDENT, OPERATIONS, R E A EXPRESS OF POTENTIAL BENEFITS BY CONSOLIDATION OR MERGER OF CERTAIN ACTIVITIES OF THE TWO COMPANIES.

Below is detailed our judgments of potential savings or advantageous arrangements for the Greyhound Corporation and R E A Express in the event the two companies would merge or consolidate certain activities. The amounts contained herein are estimates reached after fullest possible consideration and judgment on our parts, but because of the short time permitted, are made without the benefit of field study data. It is our joint opinion that these estimates are as accurate as could be determined under these circumstances. Projections have been made on both a short and long-range basis and there has also been included a projection of increases in volumes that would result on the same basis.

All of the items studied could be consummated without full ownership of R E A by Greyhound, except that the potential consolidation of Greyhound exclusive facilities with R E A exclusive facilities is dependent to some degree upon the percentage of ownership of R E A by Greyhound.

In reaching our conclusions we have proceeded on the assumption that any labor difficulties arising from such steps as recommended could be resolved.

The following is our judgment:

POTENTIAL CONSOLIDATION OF GREYHOUND EXCLUSIVE FACILITIES WITH R E A FACILITIES

The growth of Greyhound's bus express revenue has been at a rate of approximately $3 million per year. This has been a sustained growth over a long-term period of

more than five years, and it is forecasted to continue and will undoubtedly cause Greyhound's existing facilities to become congested and uneconomical to operate.[1] At that time if R E A would perform the terminal services, other than loading and unloading of buses, now performed by Greyhound definite economies would accrue to Greyhound and at the same time R E A would receive added revenues. This situation has reached the point where Greyhound's present plans in New York City are to move the package express business presently located in the Port Authority Terminal to a portion of their new garage facilities which has been set aside exclusively for package express. When [fol. 192] such moves take place any absorptive capacity of Greyhound's existing forces at their passenger terminals for handling package express will be gone and the handling cost for package express will become a direct out-of-pocket cost at the new location. From R E A's standpoint it is estimated that if we provide all sales and services for Greyhound except for loading and unloading buses, there should remain 50 per cent of gross revenue for line-haul cost and sharing of any balance by the two companies. If the current rate of growth of Greyhound continues, somewhere two to five years from now these operations for package express handling will have to be located away from the passenger express terminal except for the loading and unloading of buses. When growth requires this expansion and separation, at that time, with R E A performing this terminal service, it is our feeling that possible economies from $2 million to $4 million per year would exist. Further investigation of this matter would have to be made giving consideration to Greyhound's percentage of ownership.

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[1] It must be emphasized at this point that in the past Greyhound has had considerable absorptive capacity in its passenger terminals that has made it possible for the ratio of direct expense to revenue to remain relatively low.

ECONOMIES EFFECTED BY THE COMBINING OF GARAGE OPERATIONS OF R E A EXPRESS WITH THOSE OF GREYHOUND CORPORATION

Analysis shows both Greyhound and R E A have garage operations at 37 cities where Greyhound could absorb the service and maintenance work on all R E A automotive equipment. In addition, they have headquarters staff and field supervision sufficient with the addition of a few people to take care of the staff work and field supervision on all R E A automotive equipment. There are common garages at another 11 locations where further study would be required to determine if such facilities could be consolidated. The consolidation of the 37 garage locations plus the absorbing of headquarters and field supervision and only to a small degree reducing existing actual mechanical forces plus other economies will produce a shared savings of $1,500,000. In addition these changes would eliminate from existing R E A lease arrangements for facilities an annual expense of $12,137. Further, it would make available for sale 11 R E A company-owned garages located on owned land at an approximate sales value of $2,787,000.

COMBINED USE OF COMMUNICATION FACILITIES, DATA PROCESSING EQUIPMENT AND MACHINE ACCOUNTING BY GREYHOUND AND R E A EXPRESS

In this area it appears that R E A Express is somewhat further advanced in data processing and machine accoun ing. Greyhound presently spends in the neighborhood of $6 million in accounting and communications. By utilizing [fol. 193] joint communication facilities and the present and proposed data processing system and machine accounting of R E A, it is estimated that economies approximating $600,000 would be shared by the two companies. In addition, by jointly billing all customer accounts and other accounting procedures in the field to the extent possible, it is estimated there would be a shared savings of $500,000.

COMBINING THE SALES AND ADVERTISING EFFORT OF R E A AND GREYHOUND PACKAGE EXPRESS

It is felt that with a sufficient force to insure a proper coverage for Greyhound the commission solicitation force of Greyhound for package express could be eliminated with that service being performed by existing R E A Express salesmen. The elimination of this effort on the part of Greyhound's salesmen should permit economies in the neighborhood of $350,000 which economies can be shared by both companies.

By combining the surface transportation advertising program of R E A with Greyhound's and utilizing the existing Greyhound advertising agency plus eliminating the current R E A advertising division and supplementing Greyhound's advertising force by one man should result in an anuual savings to R E A and Greyhound of approximately $130,000.

POSSIBILITY OF CONSOLIDATING GREYHOUND TICKET OFFICES AND PACKAGE EXPRESS TERMINALS OPERATED ON A COMMISSION BASIS WITH EXCLUSIVE R E A OFFICES

At 683 points Greyhound operates on a commission basis bus and package express depots. At these same communities R E A operates an exclusive express office. At all these points where the physical location of the R E A office would be satisfactory from both a passenger and package express standpoint and where the R E A representation was sufficient, consolidation could be made of these two operations. The estimated to be shared savings would be approximately $1,500,000.

POSSIBILITIES OF ADDITIONAL VOLUME GENERATED FOR R E A IN AIR OR SURFACE SERVICE UTILIZING GREYHOUND BUS OPERATION AS A COMPLEMENT TO THAT SERVICE

A very strong possibility exists for what could be termed a package bus distribution service tied in with R E A's Air [fol. 194] Express, highway or rail operations. The consolidation of effort by the two companies, Greyhound and R E A, would create a new market with revenue opportunity arising from a complete package express service to the public. This would be principally in two categories —air express-bus express service and rail-bus express service.

By the new ability of Air Express to reach off-airline points with an expedited bus package express service, it is believed that a 10% increment in present total Air Express revenues is possible to R E A or $6 million annually. Greyhound by tacking on the expedited bus express service would realize $1,500,000 in bus express revenues. It is our opinion that this new market of $7,500,000 would have a growth potential of 10% per year thereafter or approximately $750,000, the first year.

Rail-bus express service would create a new capability for the two carriers to compete in the ltl market. The only foreseeable limitation to the growth of this service would be the physical space limitations of Greyhound's fleet.

It is estimated that the rail-bus express service would generate $6 million in new business to the Express Company which could be shared by the two companies in the ratio of 60/40 thereby increasing R E A's gross revenues by $3,600,000 and increasing the bus express revenues by $2,400,000.

POSSIBLE UTILIZATION OF UNUSED LINE-HAUL SPACE IN GREYHOUND BUSES FOR R E A EXPRESS TRAFFIC MOVING AT EXPRESS RATES

There presently exists the ability to handle in line-haul service approximately 50% more package express traffic or its equivalent in space utilization in Greyhound buses. This space is predominantly available in the daylight or other than peak hours. Where R E A could utilize this space Greyhound could and would offer to R E A an attractive line-haul cost. In the main, this space exists between other thar principal cities so that it would replace in the majority R E A over-the-road operations utilizing small equipment or third party truck routes. This will eliminate the expense of R E A's over-the-road operations in this category or the third party truck routes and will permit a sharing in an amount approximating $1 million by the two companies.

Greyhound's projected equipment changes on new buses will increase the space availability by about 200% in their standard buses and 50% in their scenic cruisers making available additional line-haul for these off-main line points. [fol. 195] This should permit R E A to utilize this space and we estimate an additional $1 million on a long-range basis of about five years hence could be shared between R E A and Greyhound.

These sharings come about by Greyhound's receiving this additional revenue for haul for their part and R E A's portion by being provided a lesser line-haul cost.

OTHER POSSIBILITIES OF ECONOMIES OR IMPROVEMENTS BY THE COMBINING OF EFFORTS ON THE PART OF GREYHOUND AND R E A

1. By establishing a joint Purchasing Division economies in actual purchasing cost on gasoline, oil, tires and other materials should result. In addition the employees engaged in purchasing efforts on the part of both com-

panies if such forces were consolidated could be reduced. The combining of these two savings will produce a sharing on the part of both companies in $700,000 per year savings.

2. Utilizing the existing Greyhound highway operations supervisory force of 43 safety supervisors and 77 line representatives should permit R E A and Greyhound to share in economies by eliminating comparable forces in R E A by approximately $150,000. In this same area the safety program for facilities and road equipment of Greyhound would be carried over to R E A. On a long-range basis projecting growth in OTR operations another $50,000 per year should be saved in approximately two years.

3. Greyhound presently has little force in Technical Development and Equipment Research. By making available the service of R E A's Technical Service and Research group for study of baggage and express operations, conveyor adaptations and other research, R E A could materially assist Greyhound and both companies participate in an approximate $50,000 savings.

4. There exists a possibility of some consolidated effort or assistance between the Boothe Leasing Corporation of Greyhound and R E A Leasing Corporation. This would require study and analysis.

5. In connection with the Greyhound package express there exists the possibility of additional revenues accruing to R E A by performing a pick-up or delivery or pick-up and delivery of Greyhound package express under a separate or supplemental tariff to be published by Greyhound for a specified rate for this service.

6. Greyhound's subsidiary, Greyhound Van Lines, could realize savings in purchasing of line-haul transportation [fol. 196] by utilizing some form of Rail Container Service

for less than van load volume. This could be provided by R E A, resulting in additional revenues to the Express Company.

7. All R E A agencies and salaried offices could act as Greyhound Van Lines sales agents in cities throughout the U. S. A. thereby realizing additional income on sales leads and orders. Greyhound Van Lines could obtain considerable additional coverage of the market which will result in added revenue to the Van Lines.

In summary, the features brought out in this memorandum will produce a short-range estimated savings per annum of $6,380,000 and on a long-range basis, looking forward to from two to five years hence, a total savings at that time including the short-range projection of from $9,430,000 to $11,430,000. It is our feeling that as knowledge of machine accounting, communications and data processing grows, the savings in this area will substantially increase.

It is the very strong feeling that if the conditions of this memorandum are placed in effect, there would be a substantial improvement volume-wise for both Greyhound and R E A for various reasons outlined, estimated to be $9,600,000 for R E A and $3,900,000 for Greyhound. Further, these changes would permit R E A the opportunity to sell facilities at an estimated value of $2,787,000.

To the best of our ability our opinions are entirely workable.

/s/ R. F. Shaffer
R. F. Shaffer, Executive
Vice President, Greyhound Lines, Inc.

/s/ Truman T. Moore
Truman T. Moore, Vice President
Operations, R E A Express

Dated this 18th day
of June, 1964.

RECAPITULATION BY AREAS OF SAVINGS ON A MERGED OR CONSOLIDATION SITUATION FOR GREYHOUND AND R E A PROJECTED SHORT-RANGE AND LONG-RANGE. THE LONG RANGE PROJECTION INCLUDES CONTINUATION OF SHORT-RANGE SAVINGS

Area	Short Range Projected Savings Per Annum	Long Range Projected Savings Per Annum
Vehicle servicing and maintenance	$1,500,000	$1,500,000
Combined sales effort	350,000	350,000
Advertising	130,000	130,000
Consolidation of Greyhound commissions offices with R E A exclusive offices	1,500,000	1,500,000
Using Greyhound's available additional line-haul capacity	1,000,000	2,000,000
Combined purchasing of oil, gasoline, etc.	700,000	700,000
Greyhound supervising R E A road operations	150,000	200,000
Combining Greyhound exclusive offices with R E A exclusive offices	-	2,000,000 to 4,000,000
Combine Technical Service and Research	50,000	50,000
Combining communications, machine accounting, data processing - R E A doing field rendition of statements	1,000,000	1,000,000
	$6,380,000	$9,430,000 to $11,430,000

[fol. 197]

[fol. 198] Annex G

APPENDIX TO MEMORANDUM DATED JUNE 18, 1964 PREPARED BY R. F. SHAFFER, EXECUTIVE VICE PRESIDENT, GREYHOUND LINES, INC. AND T. T. MOORE, VICE PRESIDENT, OPERATIONS, R E A EXPRESS

In the event that Greyhound and R E A proceed with consolidation of activities, a possibility exists whereby Greyhound Van Lines, a wholly owned subsidiary of Greyhound Lines, Inc. and a nationwide household goods carrier, would purchase from R E A, container transportation service in the amount of $600,000 a year. After five years this requirement would reach $2,000,000 annually. This assumes that R E A can provide a rate equal to or better than the Van Lines' present rate.

R E A by acting as a sales agent for Greyhound Van Lines at its 1,224 exclusive salaried offices can develop additional revenue for Greyhound Van Lines of $2,600,000 annually, for which R E A would receive commissions amounting to $260,000 annually.

Under the assumption that R E A can offer a rate equal to or better than the Van Lines now enjoy, Greyhound Van Lines would purchase transportation, either in large containers or vans, in an amount equal to $900,000 a year for the first year. It is projected that at the end of five years that Van Lines would purchase transportation up to $2,000,000 a year.

[fol. 199] [File endorsement omitted]

[fol. 200]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Washington, D. C.

[Title omitted]

Finance Docket No. 23324

REPLY OF RAILWAY EXPRESS AGENCY, INCORPORATED TO ALL PROTESTS AND PETITIONS—Filed November 17, 1964

I

On October 7, 1964, Railway Express Agency, Incorporated (REA) initiated this proceeding by filing with the Interstate Commerce Commission an application (assigned Finance Docket No. 23324) under Sections 20a and 214 of the Interstate Commerce Act for authority to issue 500,000 shares of REA's Common Stock, par value $1 per share, to The Greyhound Corporation (Greyhound) pursuant to [fol. 201] the terms and conditions set forth in the application. Subsequently, by letter dated October 12, 1964, and Return to Information Request to REA of even date herewith, REA supplied the Commission with additional information requested by it.

REA submits that the facts described in such documents demonstrate conclusively that the proposed issue satisfies the standards set forth in Sections 20a and 214 of the Interstate Commerce Act and should be approved by the Commission *without further proceedings.*

II

Since the filing of REA's application, various parties have filed protests and petitions with the Commission

attempting to interject extraneous, premature and irrelevant issues into this proceeding. Such petitions further request that the Commission hold a public hearing at which such issues may be considered.

REA submits that all the issues raised by such protests and petitions are outside the proper scope of this proceeding, *namely*, whether the proposed stock issue is (a) for some lawful object within REA's corporate purposes and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance [fol. 202] by REA of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) reasonably necessary and appropriate for such purpose. The essence of all the opposing petitions filed is that the proposed stock issue will give Greyhound "control" of REA in violation of Section 5 of the Interstate Commerce Act or that the issuance and sale of the stock to Greyhound will somehow result in harmful effects upon competition. REA will demonstrate, in this Reply, that the proposed stock issue will not have such effects and that questions of "control" and effect upon competition are premature in this proceeding and without factual basis. Accordingly, the Commission should not require a public hearing on such extraneous issues. Rather, the Commission should approve the proposed stock issue forthwith.

III

REA has received copies of the following petitions filed in this proceeding by third parties:

1. Petition for Leave to Intervene and Protest of The Denver and Rio Grande Western Railroad Company, dated October 20, 1964.

2. Petition of Freight Forwarders Institute for Right to Intervene and for a Formal Hearing in the [fol. 203] Matter, dated October 20, 1964.

3. Petition for Leave to Intervene and Protest of Southern Pacific Company, dated October 20, 1964.

4. Petition of Transcontinental Bus System, Inc., et al.,* Seeking Leave to Intervene, dated October 21, 1964.

5. Petition of Transcontinental Bus System, Inc., et al.,* to Require Filing Under Section 5, Interstate Commerce Act, and to Consolidate, dated October 21, 1964.

6. Petition for Leave to Intervene and Protest of The Atchison, Topeka and Santa Fe Railway Company, dated October 21, 1964.

7. Joint Petition for Leave to Intervene and Protest and Request for Oral Hearing of National Trailways Bus System, dated October 22, 1964.

8. Joint Petition for Leave to Intervene, and Protest, of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, dated October 23, 1964.

9. Petition for Leave to Intervene and Protest of The Missouri Pacific Railroad Company, dated October 30, 1964.

10. Petition for Leave to Intervene and Protest of American Trucking Associations, Inc., and Regular Common Carrier Conference and Request for Oral [fol. 204] Hearing, dated November 9, 1964.

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* The petitions signed "Transcontinental Bus System, Inc., et al." are said to be filed by Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Inc., Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company.

11. Petition of the United States Department of Justice For Leave to Intervene, For Consolidation of this Proceeding with a Proceeding to Determine the Lawfulness of the Proposed Transaction under Section 7 of the Clayton Act, For a Full Evidentiary Hearing, and a Pre-Hearing Conference.

(Such petitions will hereinafter sometimes be referred to by the number appearing before each, respectively.)

In addition, Greyhound filed a Petition for Leave to Intervene in Support of the Application, dated November 6, 1964.

Although 11 petitions were filed in opposition to REA's application, there are actually only four types of parties filing such petitions:

(1) dissenting stockholders (petitions nos. 1, 3, 6, 8 and 9) of REA who were out-voted at the special meeting of REA stockholders held to authorize the proposed issue and are apparently attempting to frustrate the desires of the overwhelming majority of REA stockholders;

(2) bus companies (petitions nos. 4, 5 and 7) who are competitors of Greyhound and desire the Commission to hear their grievances against Greyhound;

(3) freight forwarders and truckers (petitions nos. 2 and 10) who are, to some extent, competitors of REA and who do not want REA to strengthen its financial [fol. 205] position; and

(4) the Justice Department (petition no. 11) which requests the Commission to consolidate this 20a and 214 proceeding with some kind of a proceeding involving "Section 7 of the Clayton Act."

These parties raise various points in their petitions and ask the Commission to hold a hearing thereon. REA be-

lieves that REA and the Commission are under no obligation to accept the invitation of these parties to discuss such extraneous points. REA will, however, in this Reply, deal briefly with the substance of such points and demonstrate to the Commission that:

(1) the issues raised by the petitioners are premature;

(2) the present application does not raise an issue of "control" under Section 5 of the Interstate Commerce Act; and

(3) no formal hearing is necessary.

1. *Issues raised by the petitioners are premature.*

If this proceeding is limited to the subject matter properly before the Commission, it will become evident that the petitioners and protestants will not be harmed by the proposed issue. Petitions nos. 1, 3, 6, 8 and 9 have been filed [fol. 206] by stockholders of REA who voted against the proposed issue when it was approved at the stockholders' meeting on September 1, 1964, by over 80% of REA's stockholders. Petitions nos. 3, 6, 8 and 9 have been filed by or on behalf of corporations whose officers, sitting on the REA Board, joined in the unanimous vote of the REA Board on July 28, 1964, directing the President of REA to negotiate an agreement with Greyhound on the same terms as were finally agreed upon. Even disregarding this inconsistency by these petitioners, considering the favorable price to be received by REA for the shares sold and its obvious need for additional equity capital, it is difficult to see how any legitimate stockholder interest can be harmed if the Commission approves the proposed issue. In view of the fact that no reasons are set forth in such petitions to show that the proposed issue does not meet the standards of Sections 20a and 214, it appears clear that the petitions are merely an effort by a small minority to delay the ac-

complishment of a step which the vast majority of REA's stockholders believe to be in the best interests of the corporation.

Petitions nos. 4, 5 and 7 have been filed by bus companies competing with Greyhound. These bus companies claim they will be injured by control of REA by Greyhound and by an "amalgamation" of REA and Greyhound. The fallacy of the position taken by the bus companies is com-
[fol. 207] mon to all petitions—they seek to raise and have the Commission consider an issue not presented by the facts. REA has demonstrated, and will demonstrate herein, that there is no possibility of control by Greyhound by the acquisition of a 20% stock interest. Nor is there any question of "amalgamation" of REA and Greyhound. In the unlikely event that any such condition should eventuate, all petitioners will have ample opportunity to participate in an appropriate proceeding under Section 5 of the Interstate Commerce Act. In this connection, it must be noted that Greyhound, in its petition filed herein, has agreed that if Greyhound should subsequently acquire "any additional stock interest which would even approach a position of control, Greyhound would file an appropriate application under Section 5 of the Interstate Commerce Act". Unless and until such time arrives, petitioners should not be permitted to delay an application under Sections 20a and 214 by the introduction of such extraneous issues.

Petitions nos. 2 and 10 have been filed by associations of freight forwarders and truckers, respectively. These associations have opposed virtually every forward step taken by REA since its reorganization in 1959. In proceeding after proceeding it has been asserted that REA is "abandoning its traditional role as an express carrier". The
[fol. 208] Commission has, without exception, and as recently as November 12, 1964,* rejected this argument. The

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* *Freight, All Kinds, L.C.L., Container Charges—U.S.A.*, 323 I.C.C. 468 (1964).

freight forwarders cannot now be permitted to introduce this extraneous argument in a Section 20a proceeding. The fact is, of course, that REA is an express company regulated under Part I of the Interstate Commerce Act and has been such since long before the freight forwarders came under regulation. In fact, REA and its predecessor companies have been regulated by the Interstate Commerce Commission since the Hepburn Act in 1906. The acquisition of a stock interest in REA by Greyhound—or by anyone else, for that matter—can have no effect whatever upon the regulatory provisions applicable to REA. If the freight forwarders have a complaint about the structure of the Interstate Commerce Act and its provisions applicable to express companies, they must address that complaint to Congress. They certainly should not be permitted to introduce such an issue into a proceeding under Section 20a. The truckers make no showing in their petition of any injury to be suffered by them if the proposed stock issue should be granted.

The remaining petition has been filed by the Justice Department in a unique attempt to expand this 20a proceeding into a most novel proceeding involving Section 7 of the Clayton Act. This petition, like those filed by bus company [fol. 209] competitors of Greyhound and by the freight forwarders, requests the Commission to anticipate whatever questions might be raised by a possible consolidation of certain operating functions and facilities of REA and Greyhound. Disregarding the fact that REA's competitive posture is such that its possible bankruptcy and liquidation were discussed before the Commission and in the press as recently as four years ago, these petitioners claim that any such consolidation might result in injuring competition. Thus, the forwarders allege that REA would become a freight forwarder; the bus companies allege no bus company could compete with an "amalgamation" of REA and Greyhound and claim that the issue in this 20a and 214 proceeding is really "whether Greyhound should be allowed

to consolidate its facilities and operations with those of REA"; Trailways claims that granting REA's application will allow Greyhound to "acquire" REA and become a monopoly; and the Justice Department alleges that the proposed stock issue may in itself violate Section 7 of the Clayton Act.

But the matter of approval of issuance of securities by carriers has been committed exclusively by Congress to the Commission. There certainly can be no basis for asserting that the mere issuance by REA of the stock which is the subject—and the only subject—of this proceeding will tend to lessen competition. As to the future, it is true that REA and Greyhound *may* make a study of, and possibly effect, [fol. 210] certain economies. As the resolution adopted by the Board of Directors of REA states, however, this is only an "intention" and even this "intention" is conditioned in the resolution on such economies being "lawful". The purchase by Greyhound of a $10,000,000 interest in REA cannot in itself be a violation of Section 7 of the Clayton Act. If any "economies" are made in the future which the Justice Department feels may be "unlawful", the Department has an adequate forum at that time to challenge them. Certainly the mere expression of an intention to consider "lawful" economies in the future coupled with the purchase of a minority non-controlling interest in REA cannot be said to be factors necessitating the Commission to assume the novel position of conducting an antitrust proceeding.

REA's interest in this transaction is to acquire urgently needed capital by the sale of its shares—a sale which is not conditioned upon any other agreement being reached with Greyhound or upon Greyhound obtaining any control of or power to control REA. This interest should be protected by the Commission and not be turned aside by an investigation and hearing on such conjectural factors as have been submitted by the Justice Department. The interest of the Justice Department is to insure that competitors of REA or Greyhound will not be harmed. Both

[fol. 211] the interests of REA and the interests of the Justice Department can be fully served and protected if, *and only if,* the issues presented are taken up *at the proper time and in logical order of sequence.* There is every reason why the Commission should protect the interests of REA by authorizing the sale of REA stock to Greyhound promptly and without any further proceedings. There is no reason why the interests of the Justice Department—and any other competitors—cannot fully be protected at the time any consolidation or economies thought to be unlawful are proposed to be put into effect.

2. *The present application does not raise an issue of "control" under Section 5.*

Certain of the petitioners claim that the proposed issue may give Greyhound "control" of, or the "power to control," REA within the meaning of Section 5 of the Interstate Commerce Act. REA submits that the documents filed with the Commission by REA establish that the proposed stock issue will not give Greyhound such control or power to control. The fact is that Greyhound's five directors on the REA Board will face 18 railroad directors (divided into three voting blocs, each having at least as many votes as Greyhound) who will have the power to prevent any action proposed by Greyhound. In light of such facts, the contention that the proposed stock issue will give Greyhound control of, or the power to control, REA must be dismissed as frivolous.

[fol. 212] It is asserted by certain of the petitioners that the offer which Greyhound has agreed to make to buy up to an additional 1,000,000 shares from REA stockholders raises an issue of control which the Commission must consider at this time. For example, the petitions of the dissenting stockholders all allege that REA's application discloses that Greyhound "will also have the right to purchase up to 1,000,000 shares of the common stock of REA

from present stockholders".* Greyhound does not and will not have the *right* to purchase *any* stock from REA stockholders; Greyhound has agreed to accept tenders of up to 1,000,000 shares from REA stockholders, subject to the right of first refusal in other stockholders and to all necessary government approvals. In fact, the railroad stockholders filing such petitions have it in their power to prevent Greyhound from purchasing any stock from REA stockholders and the representatives of certain railroad stockholders have repeatedly stated their intention to do so. Whether additional purchases of REA stock by Greyhound (or by anyone else, including REA's railroad stockholders) [fol. 213] will in the future give the purchaser control of REA is a question not properly now before the Commission.** That question is premature at this time and the Commission ought not to be drawn into a consideration of such conjectural issues.

In addition, there is a rather curious attempt by the freight forwarders to use an allegation of "control" to re-examine the Standard Express Operations Agreement approved in *Express Contract, 1959* (Docket No. 33140). The petition states that all the Commission approved in that Docket was the pooling aspects posed by the Express Contract—which, of course, is true because that is all the Commission had jurisdiction of under Section 5 of the Act. This allegation, like all others bottomed on the "control"

* That statement is misleading, to say the least. Some other misleading assertions in the petitions are (a) the statement in the bus companies' petition that Greyhound may have a right of first refusal on REA stock, which is not true and was never contemplated by anyone, and (b) the allegations in the freight forwarders' petition that some kind of promises may exist which would eliminate the right of first refusal, which is not true and is denied by REA and Greyhound in the documents already filed herein.

** REA wishes to re-emphasize that Greyhound has notified the Commission that if Greyhound should subsequently acquire any additional stock interest which would even approach a position of control, Greyhound would file an appropriate application under Section 5 of the Interstate Commerce Act.

issue, is premature at this time and ought not to be allowed to confuse this 20a and 214 proceeding.

3. *No formal hearing is necessary.*

All opposing petitioners request that the Commission set a hearing to consider the approval of the proposed issue and also to consider all the other issues raised in such petitions. REA submits that there is no need for such a [fol. 214] hearing because the only issue before the Commission—the 20a and 214 issue—should be decided by the Commission on the basis of the documents submitted by REA. Such documents contain all the information in the possession of REA relating to this proceeding and a hearing could not develop any information pertinent to REA's application not now known to the Commission.

REA submits that it needs badly the $10,000,000 proceeds of the proposed stock issue and should not be compelled to await the termination of a protracted hearing on extraneous issues before receiving such proceeds.

Wherefore, the applicant prays that the Commission

(1) deny all protests and petitions filed in opposition to the application and

(2) enter an order under Sections 20a and 214 of the Interstate Commerce Act authorizing the proposed issue as described in the application.

Dated this 16th day of November, 1964.

William J. Taylor, Alan F. Doniger, Joel H. Gross, Henry P. Riordan, Counsel for Applicant Railway Express Agency, Incorporated.

[fol. 215] Certificate of Service (omitted in printing).

[fol. 216] Service Date: December 8, 1964

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED—STOCK ISSUANCE

In the Matter of Petitions for Leave to Intervene.

Present: Kenneth H. Tuggle, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER—December 2, 1964

Upon consideration of the record in the above-entitled proceeding and petitions for leave to intervene on behalf of the parties listed in the appendix attached hereto, reply of applicant thereto, and good cause appearing:

It is ordered, That said petitioners be, and they are hereby, permitted to intervene in this proceeding.

Dated at Washington, D. C., this 2nd day of December, A. D., 1964.

By the Commission, Commissioner Tuggle.

Harold D. McCoy, Secretary.

(Seal)

[fol. 217] APPENDIX

1. Freight Forwarders Institute, filed October 20, 1964
2. Southern Pacific Company, filed October 20, 1964
3. National Trailways Bus System, filed October 22, 1964
4. Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, filed October 22, 1964
5. The Atchison, Topeka and Santa Fe Railway Company, filed October 22, 1964
6. The Denver and Rio Grande Western Railroad Company, filed October 22, 1964
7. St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, filed October 28, 1964
8. Missouri Pacific Railroad Company, filed November 2, 1964
9. American Trucking Associations, Inc., and Regular Common Carrier Conference, filed November 9, 1964
10. The Greyhound Corporation, filed November 9, 1964

[fol. 218] [File endorsement omitted]

[fol. 219]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITIONS FOR LEAVE TO INTERVENE—Filed January 21, 1965

Come now Denver Chicago Trucking Company, Inc.; Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation; Illinois-California Express, Inc.; Navajo Freight Lines, Inc.; Pacific Intermountain Express Co.; Transcon Lines, in its own right and as operator of Indianapolis-Kansas City Motor Express Co. and Decatur Seaway Motor Express, Inc.; Watson-Wilson Transportation System, Inc.; Ringsby Truck Lines, Inc.; Western Gillette, Inc.; Interstate Motor Lines, Inc.; T.I.M.E. Freight, Inc.; and Consolidated Copperstate Lines, and pray leave to intervene in all further proceedings for disposition of the pending application. For cause thereof, petitioners show that:

I.

Each of petitioners is a motor common carrier of general commodities operating under certificates issued by this Commission as more fully set forth in Appendix A hereto. In providing service under its certificates each petitioner competes with Railway Express Agency, Inc. (REA).

[fol. 220] II.

The import of the program to expand the area and intensity of its competition with motor common carriers on

a nationwide basis was not fully or immediately apparent when notice of REA's proposed stock issue was published on October 24, 1964 and a period of 15 days was allowed by the Commission for filing protests. A brief ten days before, on October 14th, REA had filed a Petition seeking modification or elimination of the rail-haul restrictions presently applicable to its motor carrier certificates. As Exhibit 3 of that Petition reveals, elimination of REA's rail-haul restrictions would permit REA to tie together previously separate routes into a vast network of unrestricted motor carrier authority and to provide all-highway services in direct competition with these petitioning carriers. The Commission's rule making proceeding to define *Express Company Terminal Areas—Ex Parte No. 242,* was in the midst of hearings, and REA was there seeking the unfettered right to designate terminal areas as broad as it chooses and thus further extend the scope of its all-highway competition. However, it was only with the serving of the Commission's decision in *Freight, All Kinds, L.C.L. Container Charges*—U.S.A. 323, I.C.C. 468, on November 12, 1964, after the time for filing all protests in Finance Docket No. 23324 had expired, that the enormity of the threatened competitive impact of the REA program was fully revealed. That decision appears to leave REA free to compete for virtually all of the general commodity traffic of these petitioning carriers, without limitation as to size of shipments, expedition, premium rates or special handling requirements.

[fol. 221] As REA's program has unfolded, the issuance of 500,000 shares of REA stock for sale to The Greyhound Corporation (Greyhound), as the first step in a plan looking toward ultimate acquisition by Greyhound of a controlling interest in REA, has become a matter of the gravest importance and competitive significance to these petitioning carriers. Assessment of the true significance of the REA program and the filing of a protest within the brief time period allowed was not possible even if the Federal

Register publication had contained sufficient facts to apprise interested parties of the true nature and import of the REA's proposal to issue securities to Greyhound and the Commission's decision in *Freight, All Kinds, supra*, had been rendered. Rule 1.40 of the General Rules of Practice provides, however, that "failure to file a protest shall not prejudice subsequent participation in the proceeding."

III.

We urge the Commission to set the REA proposal for hearing in view of its vast importance to these petitioning carriers and the transportation industry. Participation by the petitioners will not unduly broaden the issues since their position will be essentially one of support for the position in opposition already taken by American Trucking Associations, Inc., and Regular Route Common Carrier Conference. These petitioning carriers are also seeking to intervene in proceedings involving REA's petition to remove its rail-haul restrictions in *MC 68562 et al.*, and in *Ex Parte 242*, in order to protect their interests in those aspects of REA's total program. These carriers are peculiarly threatened by REA's program of expanded com-
[fol. 222] petition in the freight field and are directly threatened by any step which leads to the ultimate control of REA by Greyhound with its vast financial resources and capability for bolstering REA's competitive potentials by making available its own nationwide operating facilities for express service. They believe that a significant stock interest in or control over REA by Greyhound is neither compatible nor consistent with the public interest.

These petitioners by participating in further procedures involving the disposition of this proceeding can aid in the development of a record that will permit the Commission to judge the true impact of the REA proposal on national transportation policy and to determine whether this pro-

posed security issue meets the public interest standards of section 20a, or 5(3) of the Act.

Wherefore, your petitioners pray that they will be permitted to intervene in this proceeding in opposition and participate in all further stages of the proceeding.

Respectfully submitted,

David Axelrod, 39 South La Salle Street, Chicago, Illinois 60603;

Eugene T. Liipfert, 1035 Universal Building North, Washington, D. C. 20009;

Attorneys for Petitioners.

Of Counsel: Axelrod, Goodman & Steiner, 39 South La Salle Street, Chicago, Illinois 60603, Telephone CEntral 6-9375.

Dated: January 19, 1965.

[fol. 223] Certificate of Service (omitted in printing).

[fol. 224] APPENDIX A TO PETITION

I.

Denver Chicago Trucking Company, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No, MC 29988 and subnumbers in the States of Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Washington and Wyoming, for the most part over regular routes.

II.

Consolidated Freightways Corporation of Delaware is a motor common carrier of general commodities, operating under certificates issued in Docket No. MC 42487 and subnumbers in the States of Alaska, Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Washington, West Virginia, Wisconsin and Wyoming and in the District of Columbia, for the most part over regular routes. Missouri Consolidated Freightways Corporation is a motor common carrier of general commodities operating under certificates issued in Docket No. 52746 and subnumbers in the States of Colorado, Illinois, Indiana, Iowa, Kansas and Missouri, for the most part over regular routes.

[fol. 225]

III.

Illinois-California Express, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 48958 and subnumbers in the States of Arizona, California, Colorado, Illinois, Indiana, Iowa, Nebraska, New Mexico, Oklahoma, Texas and Wyoming, for the most part over regular routes.

IV.

Navajo Freight Lines, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 76032 and subnumbers in the States of Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New York, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah and Wisconsin, and the District of Columbia, for the most part over regular routes.

V.

Pacific Intermountain Express Co. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 730 and subnumbers in the States of California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, Oregon, Utah, Washington and Wyoming, for the most part over regular routes.

[fol. 226]

VI.

Transcon Lines is a motor carrier of general commodities operating under certificates issued in Docket No. MC 110325 and subnumbers in the States of Alabama, Arizona, Arkansas, California, Georgia, Illinois, Indiana, Kansas, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee and Texas, for the most part over regular routes. Transcon Lines is operator of Indianapolis-Kansas City Motor Express Co., a motor carrier of general commodities authorized under certificates in Docket No. MC 107511 and subnumbers to serve points in the States of Illinois, Indiana, Kansas, Missouri and Virginia over regular routes, and of Decatur Seaway Motor Express, Inc., a motor common carrier of general commodities authorized under certificates in Docket No. MC 68909 and subnumbers to serve points in the States of Illinois, Indiana, Missouri and Ohio over regular routes.

VII.

Watson-Wilson Transportation System, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 70451 and subnumbers in the States of Arizona, California, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Tennessee and Wyoming, for the most part over regular routes.

[fol. 227] VIII.

Ringsby Truck Lines, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 52709 and subnumbers in the States of California, Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Nevada, Oregon, Utah, Washington and Wyoming, for the most part over regular routes.

IX.

Western Gillette, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 8948 and subnumbers in the States of Arizona, Arkansas, California, Illinois, Indiana, Kansas, Missouri, Nevada, New Mexico, Oklahoma, Tennessee and Texas, for the most part over regular routes.

X.

Interstate Motor Lines, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 33641 and subnumbers in the States of California, Colorado, Idaho, Illinois, Iowa, Kansas, Missouri, Nebraska, Nevada, Oregon, Utah and Wyoming, for the most part over regular routes.

XI.

T.I.M.E. Freight, Inc. is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 35320 and subnumbers, in the States of Alabama, Arizona, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Missouri, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Virginia, and the District of Columbia, for the most part over regular routes.

[fol. 228] XII.

Consolidated Copperstate Lines is a motor common carrier of general commodities operating under certificates issued in Docket No. MC 22167 and subnumbers in the States of Arizona, California, Louisiana, Oregon, Texas and Utah, for the most part over regular routes:

* * * * * * *

[fol. 229] Service Date: February 17, 1965

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED—STOCK ISSUANCE

In the Matter of Petition for Leave to Intervene.

Present: Kenneth H. Tuggle, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER—February 5, 1965

Upon consideration of the record in the above-entitled proceeding and petition for leave to intervene on behalf of Denver Chicago Trucking Company, Inc., Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation, Illinois-California Express, Inc., Navajo Freight Lines, Inc., Pacific Intermountain Express Co., Transcon Lines, in its own right and as operator of Indianapolis-Kansas City Motor Express Co. and Decatur Seaway Motor Express, Inc., Watson-Wilson Transportation System, Inc., Ringsby Truck Lines, Inc., Western Gillette, Inc., Interstate Motor Lines, Inc., T.I.M.E.

Freight, Inc., and Consolidated Copperstate Lines; and good cause appearing:

It is ordered, That said petitioners be, and they are hereby, permitted to intervene in this proceeding.

Dated at Washington, D. C., this 5th day of February, A. D., 1965.

By the Commission, Commissioner Tuggle.

Bertha F. Armes, Acting Secretary.

(Seal)

[fol. 230] Secretary's Certificate to following transcript (omitted in printing).

[fol. 231]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

SOUTHERN PACIFIC COMPANY, a corporation, Complainant,

vs.

THE GREYHOUND CORPORATION, a corporation, and RAILWAY EXPRESS AGENCY, INCORPORATED, a corporation, Defendants.

COMPLAINT—Filed November 3, 1964

The complaint of the above-named complainant invokes the exercise of the authority of the Commission under section 5(7) of the Interstate Commerce Act and respectfully shows:

I

Complainant is a Delaware corporation and is a common carrier by railroad in interstate commerce in the states of Arizona, California, Louisiana, Nevada, New Mexico, Oregon, Texas and Utah, having its principal place of business at San Francisco, California.

II

Defendant The Greyhound Corporation (hereinafter referred to at times as Greyhound) is a corporation, having its principal place of business at 140 South Dearborn St., Chicago, Illinois.

III

Greyhound is a common carrier by express and motor [fol. 232] vehicle or controls common carriers by express and motor vehicle engaged in the transportation of property and passengers between points in all states of the United States except Alaska and Hawaii and, as such, Greyhound is subject to the provisions of the Interstate Commerce Act.

IV

Defendant Railway Express Agency, Incorporated (hereinafter referred to as R E A), is a Delaware corporation, having its principal place of business at 219 East 42nd St., New York 17, New York. R E A is authorized to issue 2,576,000 shares of common stock, of which 1,999,188 shares have been duly issued and are outstanding. Complainant is the owner of 95,496 of said duly issued shares of stock.

V

R E A is a common carrier by express on railroads and a common carrier by motor vehicle engaged in the transportation of property between points in all states of the United States and, as such, R E A is subject to the provisions of the Interstate Commerce Act.

VI

Greyhound and R E A are competitors for the transportation of property between points in all states of the United States except Alaska and Hawaii.

VII

R E A filed with this Commission, on October 7, 1964, an application, assigned Finance Docket No. 23324, seeking authority under sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of its unissued stock, [fol. 233] said stock to be sold to Greyhound at the price of $20 per share, upon the following terms and conditions:

(a) The R E A By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the R E A Board of Directors.

(b) The R E A Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to R E A's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The R E A Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between R E A and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

(d) The R E A Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some R E A stock to airlines and/or the general public if and when conditions appear favorable to the best interests of R E A as a company.

(e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of

R E A from present shareholders at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of R E A.

(f) The offer of R E A shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of R E A may be accepted immediately, subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

VIII

The proposed transaction as set forth in paragraph VII [fol. 234] hereof encompasses the acquisition by Greyhound of control or management of R E A or of the power to exercise control or management of R E A.

IX.

The proposed transaction as set forth in paragraph VII hereof is within the scope of subparagraph (a)(i) of paragraph (2) of section 5 of the Interstate Commerce Act and is declared unlawful by paragraph (4) of said section 5 unless an application is presented to and authority secured from the Commission pursuant to subparagraph (b) of paragraph (2) of said section 5. No such application has been presented by Greyhound to the Commission, and the proposed transaction is unlawful.

Wherefore, complainant prays that defendants be required to answer the charges herein; that after due notice, hearing, and investigation by the Commission, pursuant to

its powers under paragraph (7) of section 5 of the Interstate Commerce Act, an order be made commanding said defendants to cease and desist from consummating the proposed transaction as set forth in paragraph VII hereof, and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at San Francisco, Calif., October 30, 1964.

Charles W. Burkett, W. Harney Wilson, Eugene Garfinkle, Thormund A. Miller, By Charles W. Burkett, Attorneys for Complainant.

[fol. 235]

Service Date
November 13, 1964

F. D. No. 23374 TM:CAR

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C.

November 13, 1964

Finance Docket No. 23374

SOUTHERN PACIFIC COMPANY,

v.

THE GREYHOUND CORPORATION, et al.

Notice to Defendants:

Herewith is a copy of a complaint filed with the Interstate Commerce Commission in the above-entitled case.

Defendants are hereby called upon to satisfy the complaint or to answer the same in writing within twenty days from this date.

By the Commission.

Harold D. McCoy, Secretary.

Copy to: Charles W. Burkett, Southern Pacific Company, 65 Market St., San Francisco, Calif. 94105.

A copy of the above-entitled notice and complaint sent to the following by regular mail on November 13, 1964: (7)

[fol. 236] *Raymond G. Cox, Illinois Commerce Commn., Rm. 202, Ill. State Office Bldg., Springfield, Ill.

The Greyhound Corporation, 140 S. Dearborn St., Chicago 3, Ill.

*Samuel R. Madison, P.S.C.—State of New York, 55 Elk St., Albany 1, N. Y.

Railway Express Agency, Inc.—defendant: serve on Wash. agent—MBG.

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* Complaint Only

[fol. 237]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

[Title omitted]

ANSWER OF RAILWAY EXPRESS AGENCY, INCORPORATED—
Filed December 2, 1964

For its answer to the complaint herein, Railway Express Agency, Incorporated (REA) respectfully states as follows:

1. On information and belief, admits the averments of Paragraphs I and II thereof.

2. On information and belief, denies the averments of Paragraph III thereof and refers to the Commission's decision in Docket No. MC-F-8531 and Finance Docket No. 22739 where the correct status of The Greyhound Corporation (Greyhound) is set forth.

3. Admits the averments of Paragraphs IV and V thereof.

4. Denies the averments of Paragraph VI thereof, except admits that Greyhound and REA are competitors in a [fol. 238] limited sense for the transportation of property between certain points in all states of the United States, except Alaska and Hawaii, and, in this respect, REA alleges that Greyhound is limited in its competition with REA in that Greyhound can only transport property on its passenger vehicles and that as a result there is a limitation upon the size, weight, volume and character of property which it can transport. REA further alleges that in the transportation of small shipments in the United States Greyhound handles substantially less than 1% of the total, REA handles approximately 2% of the total, and the remaining 97+% is handled by the truckers, freight forwarders, railroads and the United States Post Office through its parcel post, so that presently the competition between REA and Greyhound for the transportation of small shipments is nominal and in the aggregate the volume of small shipments transported by both REA and Greyhound is also nominal.

5. Admits the averments of Paragraph VII thereof.

6. Denies each and every averment of Paragraphs VIII and IX thereof and further respectfully refers the Commission to the pleadings and other documents filed by REA in Finance Docket No. 23324.

Affirmative Defense

As and for an affirmative defense to the complaint herein, REA alleges that the complaint itself shows that no stock [fol. 239] interest or other interest in REA has yet been obtained by Greyhound. Accordingly, no complaint will lie under the provisions of paragraph (7) of Section 5 of the Interstate Commerce Act which authorizes the Commission to investigate and determine whether any person "is violating" the provisions of Section 5(4).

Wherefore, defendant REA prays that the complaint herein be dismissed on the grounds (a) that the Commission lacks jurisdiction of the subject matter of the complaint, (b) that the complaint totally fails to set forth any factual justification for the conclusory allegations contained therein, and (c) that the pleadings and other documents filed by REA in Finance Docket No. 23324 conclusively demonstrate that the allegations of the complaint are premature and completely without factual support therefor, and defendant REA further prays that it be granted such other and further relief as to the Commission may seem proper.

December 1, 1964.

William J. Taylor, Alan F. Doniger, Joel H. Gross, Henry P. Riordan, Attorneys for Defendant, Railway Express Agency, Incorporated.

[fol. 240] Certificate of Service (omitted in printing).

[fol. 241]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

[Title omitted]

MOTION OF DEFENDANT RAILWAY EXPRESS AGENCY, INCORPORATED TO DISMISS COMPLAINT—Filed December 2, 1964

Railway Express Agency, Incorporated (REA), one of the defendants above named, moves the Interstate Commerce Commission (the Commission) to dismiss the complaint herein because of lack of legal sufficiency appearing on the face of such complaint and, in support of said motion, alleges as follows:

1. Paragraph VIII of the complaint alleges that "The proposed transaction as set forth in paragraph VII hereof" encompasses the acquisition by The Greyhound Corporation (Greyhound) of control or management of REA or of the power to exercise control or management of REA. [fol. 242] Paragraph IX of the complaint alleges that said "proposed transaction" is within the scope of Section 5(2)(a)(i) of the Interstate Commerce Act and is declared unlawful by Section 5(4) unless an application is presented to and authority secured from the Commission pursuant to Section 5(2)(b).

2. The complaint thus shows on the face thereof that it is directed against a proposed transaction and not against an existing transaction.

3. Section 5(7) authorizes the Commission to investigate and determine "whether any person is violating the provisions of paragraph (4)" of Section 5. Paragraph (4) of said Section 5 provides as follows:

> "(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transac-

tion within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5), the words 'control or management' shall be construed to include the power to exercise control or management."

4. The Commission is not authorized under Section 5(7) to investigate and determine whether a *proposed transaction* will violate the provisions of Paragraph (4) of Section 5. The complaint herein, which prays that the Com- [fol. 243] mission investigate a proposed transaction, thus shows on its face the lack of legal sufficiency thereof.

Wherefore, defendant REA prays that the complaint herein be dismissed by the Commission because of lack of legal sufficiency appearing on the face of such complaint.

December 1, 1964

William J. Taylor, Alan F. Doniger, Joel H. Gross, Henry P. Riordan, Attorneys for Defendant, Railway Express Agency, Incorporated.

[fol. 244] Certificate of Service (omitted in printing).

[fol. 245] [File endorsement omitted]

[fol. 246]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

[Title omitted]

ANSWER OF THE GREYHOUND CORPORATION—
Filed December 3, 1964

Comes Now The Greyhound Corporation, a Delaware corporation, one of the defendants above named, and answers the complaint of the Southern Pacific Company as follows:

I

Answering the allegations of Paragraph I of said complaint, this defendant admits the allegations of said paragraph.

II

Answering the allegations of Paragraph II of said complaint, this defendant admits the allegations of said paragraph.

[fol. 247]

III

Answering the allegations of Paragraph III of said complaint, this defendant denies said allegations, and in this behalf, this defendant refers to this Commission's decision in Docket No. MC-F-8531 and Finance Docket No. 22739 where the correct status of this defendant is set forth.

IV

Answering the allegations of Paragraph IV of said complaint, this defendant admits the allegations of said paragraph.

V

Answering the allegations of Paragraph V of said complaint, this defendant admits the allegations of said paragraph.

VI

Answering the allegations of Paragraph VI of said complaint, this defendant admits that it and R E A are competitors in a limited sense for the transportation of property between certain points in the United States, and in this behalf, this defendant alleges that it is limited in its competition with R E A in that this defendant can only transport property on its passenger vehicles and that as a result there is a limitation upon the size, weight, volume, [fol. 248] and character of property which it can transport. This defendant further alleges that in the transportation of small shipments in the United States it handles substantially less than 1% of the total, R E A handles approximately 2% of the total, and the remaining 97+% is handled by the truckers, freight forwarders, railroads, and the United States Post Office through its parcel post, so that presently the competition between R E A and defendant for the transportation of small shipments is nominal and in the aggregate the volume of small shipments transported by by both R E A and defendant is also nominal.

VII

Answering the allegations of Paragraph VII of said complaint, this defendant admits the allegations of said paragraph.

VIII

Answering the allegations of Paragraph VIII of said complaint, this defendant denies said allegations.

IX

Answering the allegations of Paragraph IX of said complaint, this defendant admits that no application has been

presented by it to the Commission under Section 5 of the Interstate Commerce Act and, except as so admitted, this [fol. 249] defendant denies each and every allegation of said Paragraph IX.

First Affirmative Defense

As and for a first affirmative defense to said complaint and each and every part thereof, this defendant alleges that no stock interest or other interest in R E A has yet been obtained by it and that accordingly no complaint will lie under the provisions of paragraph (7) of Section 5 of the Interstate Commerce Act which provides for a complaint and investigatory proceeding where there is an existing violation of Section 5.

Wherefore, this defendant prays that complainant take nothing by its said complaint.

Dated at San Francisco, California, this 1st day of December, 1964.

The Greyhound Corporation, By Gerald H. Trautman, Vice President.

Robert J. Bernard, The Greyhound Corporation, 140 South Dearborn Street, Chicago, Illinois 60603.

Gerald H. Trautman, The Greyhound Corporation, 601 California Street, San Francisco, California 94108.

Attorneys for Defendant, The Greyhound Corporation.

[fol. 250] Certificate of Service (omitted in printing).

[fol. 251]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

[Title omitted]

MOTION TO DISMISS COMPLAINT—December 3, 1964

Comes Now The Greyhound Corporation, one of the defendants above named, and moves the Commission to dismiss the complaint herein and in support of said motion alleges as follows:

1. The complaint purports to be filed under paragraph (7) of Section 5 of the Interstate Commerce Act. This paragraph authorizes the Commission "to investigate and determine whether any person is violating the provisions of paragraph (4)." Paragraph (4) in turn in effect makes it unlawful to control a carrier without Commission approval, so that it is plain that paragraph (7) read in con-
[fol. 252] junction with paragraph (4) is directed to circumstances where there may be an *existing* unlawful control.

2. The complaint shows on its face that there is no possibility of an *existing* unlawful control of Railway Express Agency, Incorporated ("R E A") by The Greyhound Corporation ("Greyhound"). It is based on a *prospective* transaction between R E A and Greyhound. This transaction, as the complaint shows, is pending before the Commission in Finance Docket No. 23324. Until the Commission acts in that docket to authorize the issuance of 500,000 shares of R E A stock to Greyhound, Greyhound will have no interest of any character in R E A. Accordingly, Greyhound could not possibly be in violation of the provisions of paragraph (4) of Section 5 of the Act and, therefore, there is nothing for the Commission to investigate under the provisions of paragraph (7) of Section 5.

3. The complainant is attempting to prostitute the provisions of paragraph (7) into an injunctive procedure addressed to what it conceives to be a *prospective* violation of paragraph (4). It prays in its complaint that "an order be made commanding said defendants to cease and desist from consummating the proposed transaction." But the Commission is given no such power by the provisions of paragraph (7). That paragraph further provides: "If the Commission finds after such investigation that such person [fol. 253] *is violating* the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, *to prevent continuance of such violation.*" (Emphasis supplied.) The complaint does not ask the Commission to find that Greyhound "is violating" paragraph (4) because, as the complaint shows on its face, Greyhound is not. Accordingly, the Commission could not exercise its jurisdiction to order Greyhound to take any action "to prevent continuance of such violation."

Wherefore, defendant The Greyhound Corporation prays that the complaint be dismissed by the Commission.

Dated at San Francisco, California, this 1st day of December, 1964.

Respectfully submitted,

The Greyhound Corporation, By Gerald H. Trautman, Vice President.

Robert J. Bernard, The Greyhound Corporation, 140 South Dearborn Street, Chicago, Illinois 60603;

Gerald H. Trautman, The Greyhound Corporation, 601 California Street, San Francisco, California 94108;

Attorneys for Defendant The Greyhound Corporation.

[fol. 254]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23374

[Title omitted]

REPLY OF COMPLAINANT TO MOTIONS OF DEFENDANTS TO DISMISS—Filed December 21, 1964

This reply is directed at the motion to dismiss filed in this proceeding by defendant The Greyhound Corporation ("Greyhound") and the motion to dismiss filed by defendant Railway Express, Incorporated. The sole ground advanced in support of these two motions is the contention that the Commission has no jurisdiction to prevent a party from entering into a transaction made unlawful by paragraph (4) of section 5 of the Interstate Commerce Act and that its jurisdiction is limited to requiring a person to withdraw from such a transaction only after it has been consummated.

[fol. 255] Defendants' contention is completely lacking in merit, as can be seen by merely examining the language of the applicable statute. Paragraph (7) of section 5 of the Interstate Commerce Act authorizes the Commission "to investigate and determine whether any person is violating the provisions of paragraph (4)". Paragraph (4) makes unlawful two distinct acts: (1) the acquisition of unauthorized control, and (2) the continuance of the maintenance of unauthorized control after it has been acquired. The first sentence of paragraph (4) refers to the *first* of these acts in stating: "It shall be unlawful" to "enter into any transaction within the scope of" paragraph 5(2)(a), "or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management" without authority. The second sentence of paragraph (4) refers to the *second* of these acts in stating: "It shall be

unlawful to continue to maintain control or management accomplished or effectuated."

Therefore, the Commission's power under paragraph (7) is directed to investigating and determining whether any person is violating the provisions of paragraph (4) by *either* (1) engaging in the process of acquiring unauthorized control *or* (2) continuing to maintain such control after it has been acquired. So, also, the Commission's power to issue an order is "to prevent continuance of such violation", i.e., either the violation of acquiring the control [fol. 256] or the violation of continuing to maintain such control.

The motions to dismiss are devoid of merit and should be summarily denied.

Respectfully submitted,

Charles W. Burkett, W. Harney Wilson, Eugene Garfinkle, Thormund A. Miller, Attorneys for Complainant.

[fol. 257] Certificate of Service (omitted in printing)

[fol. 258] Secretary's Certificate to following transcript (omitted in printing).

[fol. 259]

Service Date:
March 16, 1965

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 15th day of March, A. D. 1965.

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK.

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

ORDER—March 15, 1965

It appearing, That Railway Express Agency, Incorporated, by an application filed October 7, 1964, in Finance Docket No. 23324, as last supplemented November 17, 1964, seeks authority under sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of common stock, par value $1 per share, to be sold to The Greyhound Corporation (Greyhound) at a price of $20 per share; that interested parties listed in the appendix hereto have been permitted to intervene; and that Finance Board No. 2 has certified the application to us for determination;

It further appearing, That the several companies named in section II(b) of the appendix have filed a petition seeking an order requiring Greyhound to file an application under section 5 of the act, and requesting consolidation and

hearing of such application on a common record with the application for authority to issue said stock;

It further appearing, That the United States Department of Justice has filed a petition for leave to intervene and for consolidation of the application to issue securities with a proceeding to determine the lawfulness of the proposed transaction under section 7 of the Clayton Act, and for oral hearing and a prehearing conference for the purpose of formulating the issue;

It further appearing, That by complaint, served November 13, 1964, in Finance Docket No. 23374, Southern Pacific Company requests us to invoke the provisions of section 5(7) of the act, and after hearing and investigation, to require applicant and Greyhound to cease and desist from consummating the proposed transaction; that by motions filed December 2 and 3, 1964, defendants seek dismissal of the complaint; and that defendants have answered the complaint, and complainant has replied to the motions;

It further appearing, That applicant has replied to all protests and petitions, urging primarily that the application be approved without further proceedings;

It further appearing, That the filing of an application under section 5 of the act is permissive and may not be required by us, see *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line,* 320 I.C.C. 122 (127); that an investigation of whether the proposed transaction, or further prospective agreements between applicant and Greyhound, might violate the provisions of section 5, or section 7 of the Clayton Act, would not be appropriate at this time; and that a hearing is not necessary for a determination of the application for authority to issue said stock under the provisions of sections 20a and 214.

[fol. 260] It further appearing, That applicant's charter authorizes it to issue 2,576,000 shares of common stock, of which 1,999,188 shares are outstanding, owned by some 60 railroads; that said stock is not required to be held only

by railroad corporations; that outstanding shares are subject to a right of first refusal by railroad shareholders; and that the shares proposed to be issued to Greyhound will not be subject to such right;

It further appearing, That after the proposed sale to Greyhound of 500,000 shares of applicant's authorized but unissued common stock at $20 per share, Greyhound will offer to purchase from railroad shareholders of applicant up to 1,000,000 shares of outstanding common stock at the same price; and that to comply with terms and conditions of the offer, applicant's board of directors, at a meeting held September 1, 1964, adopted resolutions declaring intentions (a) to refinance, if necessary, $27,637,054 of outstanding 5-percent notes, issued originally to applicant's stockholders, or otherwise to secure waiver or cancellation of a prohibition against payment of dividends; (b) to consider seriously and work toward a long-term agreement between applicant and Greyhound to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage; and (c) to consider seriously at a later time the sale of some stock to airlines and/or the general public if and when conditions appear favorable to the best interests of applicant as a company;

It further appearing, That at a special meeting of applicant's stockholders held October 1, 1964, resolutions approving the proposed stock issue and amending applicant's by-laws to increase the membership of the board of directors from 23 to 25 and to increase the number of directors at large from 5 to 7, were adopted by a vote of 1,654,572 shares for and 269,880 shares opposed to the resolutions; that railroad stockholders have the right to nominate 18 members; that 7 may be nominated by railroads of the eastern district and 6 and 5 may be nominated by western and southern district railroads, respectively; that 5 of the 7 at-large directors may be nominated by bus company hold-

ers of at least 20 percent of the stock issued and outstanding; that an affirmative vote of two-thirds of the stock issued and outstanding is required to amend the by-laws in respect of the number of directors nominated by districts; and that for any alteration in the number of directors or in the method of nominating directors at large, the affirmative two-thirds vote shall include a majority of the issued and outstanding stock held by bus company stockholders as aforesaid;

It further appearing, That applicant urgently needs the proceeds of $10,000,000 in its program of acquiring and modernizing terminals and equipment in order to keep operating costs at a reasonable level; that it is handicapped in borrowing to finance capital improvements because of its unfavorable debt-equity ratio; that the proposed issue will improve its ratio as well as reduce to some extent the amount of future borrowing required; that the price of $20 per share is fair and reasonable; and that the expenses of the issue are estimated at $15,000;

[fol. 261] It further appearing, That interveners' opposition is directed to the possibility of control of applicant by Greyhound, through the purchase of the proposed stock issue or presently outstanding shares or otherwise, and to the anticipated combination and correlation of certain of their facilities and services;

It further appearing, That Greyhound offered to purchase a controlling stock interest, later offered to accept equal stock ownership with the railroads, and finally agreed to purchase the 20-percent stock interest as described; that it was told in negotiations by representatives of the railroads, including representatives of dissident railroads, that it would not acquire one additional share under the offer to purchase up to one million shares subject to the right of first refusal by such railroad shareholders; that the make-up of the board of directors under the by-laws, as amended, would not permit Greyhound to control the board; that 5 Greyhound directors would face 18 railroad directors,

divided into three voting blocs, each having at least as many votes as Greyhound; that 13 railroad or at-large directors would have the power to prevent any action proposed by Greyhound; that it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant; and that control or power to control must be real and not based on conjecture or remote possibilities, *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 703 (714);

It further appearing, That if in the future the acquisition of control or power to control, or other matter or transaction to which section 5 of the act applies, becomes imminent or apparent, the opportunity will be available for all interested persons to interpose their opposition; and it appearing that Greyhound has acknowledged the requirements of section 5 in this regard and has stated that it will file a timely application; and that nothing herein shall be construed as a determination of any matter under any section of the act, except sections 20a and 214, as expressly determined herein, or as creating a presumption as to the action which may be taken on any such application under section 5; and

It further appearing, and the said Division so finds, that the proposed issue by Railway Express Agency, Incorporated, of not exceeding 500,000 shares of common stock of the par value of $1 each, as aforesaid, (a) is for a lawful object within its corporate purposes and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as an express company and a common carrier by motor vehicle, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose:

It is ordered, That the United States Department of Justice be, and it is hereby, permitted to intervene.

It is further ordered, That in all other respects, the petitions of interveners for hearing and other proceedings be, and they are hereby, denied.

[fol. 262] It is further ordered, That the complaint in Finance Docket No. 23374 be, and it is hereby, dismissed.

It is further ordered, That Railway Express Agency, Incorporated, be, and it is hereby, authorized to issue not exceeding 500,000 shares of common stock of the par value of $1 each, to be sold to a non-railroad corporation at a price of not less than $20 per share.

It is further ordered, That this order shall become effective 35 days from the date it is served.

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by the applicant, unless or until so ordered or approved by this Commission.

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the order of the Commission, Division 3, dated May 20, 1964, respecting applications filed under sections 20a and 214 of the said act (49 CFR 56.6).

It is further ordered, That the applicant shall submit for the consideration of this Commission three copies of the journal entries required to record the transaction, and nothing herein is to be construed as approval of the proposed accounting; and

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said stock, or dividends thereon, on the part of the United States.

By the Commission, Division 3.

Bertha F. Armes, Acting Secretary.

(Seal)

[fol. 263]

F.D. No. 23324

APPENDIX

Parties permitted to intervene

I. In support of the application:

The Greyhound Corporation

II. In opposition to the application:

(a) Railroads of the western district, which own 269,880 shares of applicant's outstanding common stock

Southern Pacific Company, 95,496 shares
The Atchison, Topeka and Santa Fe Railway Company, 95,496 shares
The Denver and Rio Grande Western Railroad Company, 12,456 shares
St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, each 4,152 shares
Missouri Pacific Railroad Company, 58,128 shares, of which 41,520 shares are owned directly and 16,608 shares are owned indirectly through its subsidiary, The Texas and Pacific Railway Company.

(b) National Trailways Bus System, an association, and several motorbus companies

Transcontinental Bus System, Inc.
American Buslines, Inc.
Arkansas Motor Coaches, Ltd., Inc.
Bayshore Buslines, Inc.
Continental Bus System, Inc.
Continental Crescent Lines, Inc.
Continental Panhandle Lines, Inc.
Continental Southern Lines, Inc.

Continental Tennessee Lines, Inc.
Denver-Colorado Springs-Pueblo Motorway
Denver-Salt Lake-Pacific Stages, Inc.
Continental Pacific Lines, Inc.
Midwest Buslines, Inc.
Smoky Mountain Stages, Inc.
Tennessee Trailways, Inc.
Union Bus Lines, Inc.
Muscatine, Davenport and Clinton Bus Company.

(c) American Trucking Associations, Inc., Regular Common Carrier Conference, and several trucking companies

Denver Chicago Trucking Company, Inc.
Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation
Illinois-California Express, Inc.

[fol. 264]

Navajo Freight Lines, Inc.
Pacific Intermountain Express Co.
Transcon Lines, in its own right and as operator of Indianapolis-Kansas City Motor Express Co., and Decatur Seaway Motor Express, Inc.
Western Gillette, Inc.
Interstate Motor Lines, Inc.
T.I.M.E. Freight, Inc.
Consolidated Copperstate Lines

(d) Freight Forwarders Institute, representing freight forwarders.

[fol. 265]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Docket No. 23324

[Title omitted]

PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., AND REGULAR COMMON CARRIER CONFERENCE TO STAY THE EFFECTIVE DATE OF DIVISION 3's ORDER—Filed April 2, 1965

Come now American Trucking Associations, Inc. (ATA), and Regular Common Carrier Conference (Conference), and file this petition asking the Commission to stay the effective date of Division 3's order, served March 16, 1965, and as grounds therefor state:

By application filed October 7, 1964, Railway Express Agency, Incorporated (Railway Express), seeks authority under sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of common stock, par value $1 per share, to be sold to the Greyhound Corporation (Greyhound), at a price of $20 per share. ATA, Conference, 10 motor carriers, National Trailways Bus System, 17 motor bus companies, Freight Forwarder Institute, and 5 railroad stockholders of Railway Express filed petitions for leave to intervene in opposition to the application, and Greyhound filed a petition for leave to intervene in support of the application. A petition for leave to intervene was also filed by the Department of Justice, which requested the Commission to consolidate the application with a proceeding to determine the lawfulness of the proposed transaction under section 7 of the Clayton Act. Railway Express replied to the protests and petitions for leave to intervene [fol. 266] in opposition to its application. The Commission, however, granted all the petitions for leave to intervene.

In its March 16th order, Division 3 found that the proposed issuance by Railway Express of the 500,000 shares of common stock is for a lawful object within its corporate purposes and compatible with the public interest, will not impair its ability to perform service for the public as an express company and common carrier by motor vehicle, and is reasonably necessary and appropriate for such purpose. It rejected intervenors' arguments in opposition to the application, finding that a hearing was not appropriate at this time to investigate whether the proposed transaction might violate the provisions of section 5 or section 7 of the Clayton Act. Division 3 then went on to authorize Railway Express to issue the 500,000 shares of common stock and provided an effective date 35 days from the date of service. Thus unless the order is stayed, it would appear to give Railway Express and Greyhound authority to consummate the sale of the stock on April 20th.

Section 17(8) of the Interstate Commerce Act provides that where an application for reconsideration of an order of a division is made in accordance with section 17 and the rules and regulations of the Commission, and the order has not yet become effective, the order shall be stayed pending disposition of the matter by the Commission or appellate division. Petitioners are in the process of drafting a petition for reconsideration of Division 3's order pursuant to section 101 of the Commission's General Rules of Practice. It would appear that the filing of our petition on April 15 will automatically stay the order of Division 3. But, because there is no express rule in the General Rules of Practice which states that the order of a division is stayed upon the filing of a petition for reconsideration, we find it necessary to ask specifically that the Commission stay indefinitely the effectiveness of Division 3's order. [fol. 267] Should we be wrong in our interpretation of the effect of section 17(8), the Commission would have only five days within which to consider and to act upon our petition for reconsideration and any other petitions which may be filed. We submit that this is insufficient time to consider

properly this proposal, which is of such general transportation importance. Furthermore, unless an order is issued staying the effective date, there would be an outstanding order apparently authorizing Railway Express and Greyhound to consummate the transaction, even while the question of the correctness of the order authorizing the issuance of the stock is still pending on appeal and accordingly is not administratively final.

We ask, therefore, that the Commission stay the order authorizing Railway Express to issue the 500,000 shares of its stock in order that the Commission may be afforded a reasonable opportunity to judge the merits of our petition for reconsideration, and any reply thereto filed by Railway Express.

Prayer

For the reasons stated, ATA and the Conference respectfully request that the Commission issue an order staying indefinitely, until further order, the effective date of the order of Division 3, served March 16, 1965, permitting Railway Express to issue 500,000 shares of its stock until consideration has been given to our petition for reconsideration, which will be filed on or before April 15, 1965.

[fol. 268] Respectfully submitted,

Regular Common Carrier Conference, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036.

Roland Rice, Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

American Trucking Associations, Inc., Peter T. Beardsley, William R. Rubbert, Harry J. Jordan, Paul D. Borghesani, Richard R. Sigmon, 1616 P Street, N. W., Washington, D. C. 20036.

Certificate of Service (omitted in printing).

[fol. 269] [File endorsement omitted]

[fol. 270]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C.

Docket No. 23324

[Title omitted]

PETITION TO STAY THE EFFECTIVE DATE OF DIVISION 3's ORDER—Filed April 6, 1965

of

Denver Chicago Trucking Company, Inc.; Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation; Illinois-California Express, Inc.; Navajo Freight Lines, Inc.; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Ringsby Truck Lines, Inc.; Western Gillette, Inc.; Interstate Motor Lines, Inc.; T.I.M.E. Freight, Inc.; and Consolidated Copperstate Lines.

Come now Denver Chicago Trucking Company, Inc.; Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation; Illinois-California Express, Inc.; Navajo Freight Lines, Inc,; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Ringsby Truck Lines, Inc.; Western Gillette, Inc.; Interstate Motor Lines, Inc.; T.I.M.E. Freight, Inc.; and Consolidated Copperstate Lines and file this petition asking the Commission to stay the effective date of Division 3's Order, served March 16, 1965, and as grounds therefor state:

[fol. 271] 1. Your Petitioners were granted leave to intervene in this proceeding, and have continuing interest therein.

2. Your Petitioners take the same position with respect to the necessity for a Stay of the Division 3 Order as set forth in the petition of American Trucking Associations, Inc., and Regular Route Common Carrier Conference, filed April 1, 1965.

3. Your Petitioners intend to file a petition for reconsideration in this matter.

Prayer

Wherefore, your Petitioners respectfully request that the Commission issue an order staying indefinitely until further order, the effective date of the order of Division 3, served March 16, 1965, permitting Railway Express to issue 500,000 shares of its stock until consideration has been given to a petition for reconsideration of these Petitioners which will be filed on or before April 15, 1965.

Respectfully submitted,

David Axelrod, 39 South La Salle Street, Chicago, Illinois 60603, By Eugene T. Liipfert, 1035 Universal Building North 1875 Connecticut Avenue, N. W., Washington, D. C. 20009, Attorneys for Petitioners.

[fol. 272] Certificate of Service (omitted in printing).

[fol. 273]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C.

Finance Docket No. 23324

[Title omitted]

PETITION OF FREIGHT FORWARDERS INSTITUTE TO STAY THE EFFECTIVE DATE OF THE ORDER OF DIVISION 3—Filed April 8, 1965

Comes now the Freight Forwarders Institute and petitions the Commission to stay the effective date of the order of Division 3 herein dated March 15, served March 16, 1965, and as grounds therefor states:

1. Petitioner was granted leave to intervene in this proceeding by order of the Commission dated February 5, 1965.

2. Petitioner hereby adopts as its own and reiterates the reasons for a stay of the said order set forth in the petition of American Trucking Associations, Inc., and Regular Common Carrier Conference, filed April 1, 1965.

[fol. 274] 3. Petitioner will file a petition for reconsideration of the said order of Division 3.

Wherefore, petitioner respectfully requests that the Commission issue an order staying until further order the effective date of the order of Division 3 hereinabove identified.

Respectfully submitted,

Freight Forwarders Institute, By: Harry C. Ames, 527 Transportation Bldg., Washington, D. C. 20006.

Giles Morrow, 1012 Fourteenth St., N. W., Washington, D. C. 20005.

April 8, 1965, Washington, D. C.

Certificate of Service (omitted in printing).

[fol. 275] [File endorsement omitted]

[fol. 276]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Finance Docket No. 23324

[Title omitted]

REPLY OF RAILWAY EXPRESS AGENCY, INCORPORATED, TO PETITIONS OF AMERICAN TRUCKING ASSOCIATIONS, INC., REGULAR COMMON CARRIER CONFERENCE AND DENVER CHICAGO TRUCKING COMPANY, INC., ET AL., TO STAY THE EFFECTIVE DATE OF ORDER OF DIVISION 3—Filed April 9, 1965

I

On October 7, 1964, Railway Express Agency, Incorporated (REA) initiated this proceeding by filing with the Interstate Commerce Commission an application (assigned Finance Docket No. 23324) under Sections 20a and 214 of the Interstate Commerce Act for authority to issue 500,000 [fol. 277] shares of REA's Common Stock, par value $1 per share, to The Greyhound Corporation pursuant to the terms and conditions set forth in the application. Subsequently, various parties filed petitions to intervene in this proceeding and requested a hearing and other proceedings. By Order of Division 3 served on March 16, 1965, Division 3 found that the proposed issue by REA satisfied the standards set forth in Sections 20a and 214 of the Interstate Commerce Act, authorized the proposed issue pursuant to said Sections and denied the petitions of interveners for a hearing and other proceedings. Said Order provided by its terms that it will become effective 35 days from the date it was served.

Petitions were filed with the Commission on April 1, 1965, by American Trucking Associations, Inc., and Regular Com-

mon Carrier Conference and on April 6, 1965, by Denver Chicago Trucking Company, Inc., et al.* (hereinafter collectively called the Petitioners), requesting the Commission to stay "indefinitely" the effective date of Division 3's Order until consideration could be given to petitions for reconsideration which the Petitioners alleged will be filed by them [fol. 278] on or before April 15, 1965.

REA has no objection to a stay of Division 3's Order until all petitions for reconsideration duly filed on time shall have been considered and disposed of pursuant to the rules and regulations of the Commission, but REA urges that all such petitions as may be filed be considered and disposed of as soon as possible.

II

REA has little doubt that if any of the Petitioners should file with Division 3 by April 15, 1965, a petition for reconsideration of Division 3's Order, the effective date of said Order would be automatically stayed, pursuant to the Interstate Commerce Act and the rules and regulations of the Commission, until the disposition of such petition for reconsideration.

As stated above, REA has no objection to a stay of Division 3's Order pending consideration of all petitions for reconsideration which may be duly filed on time. REA expresses no opinion on whether the Commission should grant or deny the petitions for stay filed by the Petitioners, be- [fol. 279] cause the requested stay will result in either case. If such petitions should be granted, however, the Commission should not stay Division 3's Order "indefinitely", as

* In addition to Denver Chicago Trucking Company, Inc., the following are alleged to have filed said petition: Consolidated Freightways Corporation of Delaware; Missouri Consolidated Freightways Corporation; Illinois-California Express, Inc.; Navajo Freight Lines, Inc.; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Ringsby Truck Lines, Inc.; Western Gillette, Inc.; Interstate Motor Lines, Inc.; T.I.M.E. Freight, Inc.; and Consolidated Copperstate Lines.

the Petitioners request, but rather should stay said Order until a petition for reconsideration, duly filed on time by the Petitioners, shall have been considered and disposed of.

III

REA does not, however, acquiesce in an indefinite prolongation of this proceeding. REA needs badly the $10,000,000 proceeds of the stock issue and urges that all petitions for reconsideration filed in this proceeding be expeditiously considered and disposed of.

In its Order, Division 3 concluded:

> "That applicant urgently needs the proceeds of $10,000,000 in its program of acquiring and modernizing terminals and equipment in order to keep operating costs at a reasonable level; that it is handicapped in borrowing to finance capital improvements because of its unfavorable debt-equity ratio; that the proposed issue will improve its ratio as well as reduce to some extent the amount of future borrowing required; that the price of $20 per share is fair and reasonable; and that the expenses of the issue are estimated at $15,000".

That conclusion is amply supported by the record which was before Division 3. REA's need for the proceeds of the proposed issue is no less urgent now than it was last Oc- [fol. 280] tober 1, 1964, when REA stockholders overwhelmingly approved the proposed stock issue. Six months have already passed since that date and REA has still not received the proceeds of the proposed issue.

REA is confident that Division 3 will be sustained in its finding that the proposed issue by REA satisfies the standards of Sections 20a and 214 of the Interstate Commerce Act and should be authorized by the Commission thereunder. And REA desires that all petitions for reconsideration of Division 3's Order be duly considered and disposed of. But REA wishes to emphasize again that such petitions

should be speedily considered and disposed of so that REA may receive the proceeds of the proposed issue as soon as possible.

Dated this 7th day of April 1965.

William J. Taylor, Alan F. Doniger, Joel H. Gross, Henry P. Riordan, Counsel for Applicant Railway Express Agency, Incorporated.

[fol. 281] Certificate of Service (omitted in printing).

[fol. 282] [File endorsement omitted]

[fol. 283]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. MC-F-23324

[Title omitted]

PETITION FOR RECONSIDERATION OF THE ORDER OF DIVISION 3—
Filed April 14, 1965

Now come Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Inc., Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, Petitioners herein, and for cause would show to the Commission as follows:

Statement of Facts

Docket No. MC-F-23324 is the application of Railway Express Agency, Inc., (REA) for authority, under Sec-

tions 20a and 214 of the Interstate Commerce Act, to issue securities. REA proposes to issue 500,000 shares of its authorized but unissued shares of common stock to the Greyhound Corporation (Greyhound) for a total price of Ten Million Dollars ($10,000,000.00).

In opposition to said Application to issue securities, Pe- [fol. 284] titioners timely filed Petitions seeking: (1) leave to intervene; (2) to require REA and Greyhound to file an application under Section 5 of the Act; (3) and to consolidate the securities and Section 5 application for hearing on a common record. Petitioners also requested that oral hearings be held on the instant application. By Order served December 8, 1964, Petitioners were permitted to intervene in this proceeding.

By Order dated March 15, 1965, served March 16, 1965, Division 3 denied the Petitions for hearing and other proceedings, and authorized REA to issue not exceeding 500,000 shares of common stock of the par value of $1.00 each. Petitioners respectfully submit that Division 3 has erred in its decision and requests that the matter be reconsidered.

Conclusions and Findings Requested to Be Reconsidered

Petitioners request that the following conclusions and findings contained in the Order of Division 3 be reconsidered:

1. The conclusion that an investigation of whether the proposed transaction, or further prospective agreements between Applicant and Greyhound, might violate the provisions of Section 5 would not be appropriate at this time.

2. The conclusion that a hearing is not necessary for a determination of the application for authority to issue stock under the provisions of Sections 20a and 214.

3. The finding that the proposed issue by REA (a) is for a lawful object within its corporate purposes and com-

patible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as an express company and a common carrier by motor vehicle, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

[fol. 285]

An Investigation of Whether the Proposed Transaction Will Result in Control or Power to Control Is Proper at This Point in the Proceeding

If it be shown that the proposed transaction will result in Greyhound controlling, or having the power to control REA, then the Commission must require Greyhound to file an application under Section 5 of the Act. The question of control, or power to control, is governed by the facts and circumstances existing in each case and is not dependent upon a majority ownership of stock. *Rochester Telephone Co.* v. *United States,* 307 U.S. 125.

The facts and circumstances existing in the proposed transaction have not been fully and fairly presented. They cannot be so presented unless and until this matter is the subject of an oral hearing. The Order of Division 3 is based solely upon the statements of representatives of REA and Greyhound, who were not subjected to cross-examination by the protesting Intervenors.

Division 3 has concluded that it is unlikely that Greyhound could sway the thinking of the other Directors elected from the railroad owners of REA and that control or power to control must be real and not based on conjecture or remote possibility. Division 3's conclusion is based solely upon the fact that Greyhound will only have 20% of REA stock and can only elect five of twenty-five Directors. In other words, the decision is based solely upon stock ownership.

Division 3 has apparently failed to consider the power of Greyhound to control REA by means other than stock

ownership, viz: control of terminal facilities, interline express, economic pressure and etc. REA has for a number of years indicated that they are in dire financial trouble, and their application states that they *urgently* need the proceeds from the sale of this stock and that they are handicapped in borrowing funds because of their unfavorable debt-equity ratio. All of these facts would tend to indicate that Greyhound will exercise considerable economic power over REA.

[fol. 286] The Commission has consistently held that control or power to control is not necessarily dependent upon a majority ownership of stock. While the acquisition by Greyhound of 20% of REA common stock would not normally be considered as control, there are many other factors to be considered. REA has indicated that the proceeds from the sale of stock will be used in its program of acquiring and modernizing terminals and equipment. Greyhound already has thousands of terminals throughout the entire United States, and it is the stated intention of Greyhound and REA to work towards an agreement between themselves to consolidate operating functions and facilities. Rather than use the money to acquire and modernize terminal facilities, REA would be more likely to use the existing facilities of Greyhound. In this event, Greyhound would not only exercise considerable economic power over REA but would also exercise considerable power over terminal facilities and interline express.

The Commission inquired as to whether or not the purchase of additional shares by Greyhound would increase Greyhound's representation on the Board of Directors proportionately. REA replied and stated that the by-laws of REA do not provide for any such proportionate representation and such by-laws may be amended only by the affirmative vote of two-thirds of REA stock issued and outstanding. Division 3 has apparently assumed that Greyhound could not influence two-thirds of the issued and outstanding shares of stock to amend the by-laws to provide for proportionate representation on the Board of Direc-

tors, and has stated that it is unlikely that Greyhound could influence the thinking of a sufficient number of directors to achieve control of REA.

[fol. 287] However, Division 3 apparently has not considered some of the former affiliations of Greyhound. Greyhound, with 500,000 shares of REA stock, the New York Central Railroad, with 294,792 shares of REA stock, the Pennsylvania Railroad Company, with 261,576 shares of REA stock, and the Great Northern Railway Company, with 31,140 shares of REA stock, between them lack only, approximately, 600,000 shares of stock in order to obtain the necessary two-thirds of the outstanding stock necessary to change said by-laws. These are railroads that have had close affiliations with Greyhound. At one time the New York Central Railroad owned 50% of the voting stock of Central Greyhound Lines, Inc. At one time the Pennsylvania Railroad Company owned 50% of the voting stock of Pennsylvania Greyhound Lines, Inc. At one time the Great Northern Railway Company owned 45% of the voting stock of Northland Greyhound Lines, Inc. Greyhound subsequently acquired a majority of the voting stock of all of the aforementioned bus companies and they were merged into the Greyhound Corporation.

It is apparent that the railroads of the eastern and southern districts, along with Greyhound, could place the control of REA in the hands of Greyhound. It should be remembered that not a single eastern or southern district railroad opposed the proposed stock issuance, and only a minority of the western district railroads oppose said transaction. Division three has apparently been convinced that these are remote possibilities. Their decision is based upon the statements and representations of REA and Greyhound, which statements and representations are nothing more than self-serving declarations. Petitioners submit that the Commission should have all the facts before them before any decision is made. This can only be done if a full and complete investigation be ordered at this time.

[fol. 288]

The Proposed Stock Issuance Is Not Compatible With the Public Interest and Is Neither Necessary Nor Appropriate for or Consistent With the Proper Performance by REA of Service to the Public as an Express Company and a Common Carrier by Motor Vehicle

REA has stated in its application that the proposed transaction will provide a working basis for REA and Greyhound entering into an agreement with respect to the consolidation of certain operating functions and facilities. The Order of Division 3 will permit REA and Greyhound to do exactly what they have proposed. This means a consolidation of the operating functions and facilities of the largest motorbus company in the world (who derived $30,220,460.00 in 1963 from the transportation of express in the same vehicle with passengers) and the largest express company in the world.

REA and Greyhound competitors will be faced with a new form of competition not heretofore experienced by them. This will be new competition and can only result in a diversion of the express revenue needed by these Petitioners to maintain a continuous and adequate service to the public. Such a result would be contrary to the public interest.

Many of the Petitioners' passenger operations are dependent upon express revenue in order to render continuous and adequate service to the public. The consolidation of REA and Greyhound facilities and operations would, in effect, destroy all competition in the package express phase of motorbus transportation. No motorbus company could hope to meet the competition offered by such a consolidation. Such consolidation would only result in a restraint of competition and would not be compatible with the public interest.

The foregoing is especially true in light of the application of REA, in Docket No. MC-66562 et al., to remove the [fol. 289] rail-haul restrictions from their existing certificates. Removal of rail-haul restrictions from their existing

certificates will permit REA to transport express wholly by motor vehicle in direct competition with Petitioners. When considered in conjunction with the consolidation of REA and Greyhound facilities and operations, it is clearly evident that this will result in a substantial diversion of Petitioners' express revenue.

Petitioners submit that the issuance of stock by REA to be sold to Greyhound is not in the public interest and is neither necessary nor appropriate for, or consistent with the proper performance by REA of service to the public as an express company or common carrier. As stated by the Commission in *Railway Express Agency, Inc.,—Extension—Nashua, N.H.*, 91 MCC 311, the Commission must, in accomplishing the purposes forming the national transportation policy, provide for fair and impartial regulation of all modes of transportation subject to the provisions of the Act and *recognize and preserve the inherent advantages of several modes of transportation.* The Order of Division 3 will undoubtedly destroy the customary distinctions between and inherent advantages of the several modes of transportation.

Annex 'G' of REA's Return to Information Request to REA, dated November 16, 1964, purports to show the benefits accruing to REA and Greyhound from the proposed consolidation. It states that the figures contained therein are *estimates* of the economies and additional revenue which they expect to achieve by the proposed consolidation. As to whether or not there would be any resulting economies from the proposed consolidation and whether or not such economies, if any, are outweighed by the competitive harm resulting to competing carriers, is not a matter that can be determined by the self-serving declaration of REA and [fol. 290] Greyhound. The public interest demands that the Commission weigh the alleged benefits against the alleged competitive harm before reaching a decision, and to do so the Commission must hear *all* the facts and circumstances.

While the proposed consolidation might result in certain economies for REA and Greyhound, it will certainly result

in additional revenue to both carriers. It cannot be denied that the combined efforts of REA and Greyhound will place Petitioners in a position of being unable to compete with them for express revenue and will result in a restraint of competition; which is not in the public interest.

A Hearing Is Necessary for a Proper Determination of the Application

The question of whether the proposed stock issuance to Greyhound will result in Greyhound having the power to control REA cannot properly be resolved until all the facts are before the Commission. This can only be accomplished by the Commission holding hearings on the instant application.

The application presents issues and questions never before considered by this Commission. The consolidation of a bus company and express company has never been attempted under the Act, and whether the issuance of stock by REA to Greyhound is in the public interest and consistent with the proper performance by REA of service to the public is a matter that can only be decided after a full hearing on the issues.

It is imperative that a hearing be held so that Petitioners may properly show the adverse effect the issuance of stock by REA to Greyhound would have upon the existing competitive situation. The evidence of express revenue subject [fol. 291] to diversion consists of voluminous and complicated exhibits that will require extensive oral explanation for a clear understanding. The competitive harm that will result from a grant of the requested authority is a vital issue in this proceeding, and cannot properly be developed without the introduction of voluminous exhibits and extensive testimony from competent witnesses.

The application of REA raises numerous issues concerning proper regulatory policy as related to: the public interest; the maintenance of sound economic conditions in transportation and among the several carriers; the ren-

dering of transportation service without unjust discrimination, undue preferences or advantages, or unfair and destructive competitive practices; and the preservation of the inherent advantages of the several modes of transportation. A proper determination of these issues requires that an oral hearing be held.

Requested Findings

Petitioners respectfully request that Division 3 reconsider its Order of March 15, 1965, and make the following conclusions and findings:

1. That an investigation of whether the proposed transaction will result in control or power to control is proper at this point at the proceedings.

2. That a hearing is necessary for a proper determination of the issues involved in this Application.

3. That the proposed stock issuance is not compatible with the public interest and is neither necessary nor appropriate for or consistent with the proper performance by REA of service to the public as an express [fol. 292] company and a common carrier by motor vehicle.

Wherefore, Petitioners pray that the Order of Division three be reversed and the Application be in all things denied; or, in the alternative, that the order of Division three be vacated and the Application be set for hearing at such time as the Commission may determine.

Respectfully submitted,

Transcontinental Bus System, Inc., et al., Warren A. Goff, D. Paul Stafford, 315 Continental Avenue, Dallas, Texas 75207, Attorneys for Petitioners.

Certificate of Service (omitted in printing).

[fol. 293] BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324[1]

[Title omitted]

PETITION FOR RECONSIDERATION AND ORAL HEARING OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS—Filed April 14, 1965

PRELIMINARY STATEMENT

The Railway Express Agency, Incorporated (REA), by application filed October 7, 1964, in Finance Docket No. 23324, as last supplemented November 17, 1964, sought authority under sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of common stock, par value of $1.00 per share, to be sold to The Greyhound Corporation (Greyhound) at a price of $20.00 per share.

The application was certified by Finance Board No. 2 to Division 3, which, by order dated March 15, 1965, granted the application of REA. The order of Division 3 also dismissed the complaint filed by Southern Pacific Company in Finance Docket No. 23374 requesting the Commission to invoke the provisions of section 5(7) of the act, and after hearing and investigation to require REA and Greyhound to cease and desist from consummating the proposed transaction. The application and complaint were disposed of without written or oral evidence or argument and based solely upon the application filed under sections 20a and 214, the complaint filed under section 5, and the several petitions for leave to intervene.

[fol. 294] Petitioners, by joint petition for leave to intervene and protest, opposed the proposed issue of 500,000

[1] The order dated March 15, 1965, also embraces the complaint in Finance Docket No. 23374, *Southern Pacific Co.* v. *Greyhound Corp. and Railway Express Agency, Inc.*

shares of common stock to Greyhound by REA on the grounds that it did not warrant the findings prerequisite to authorization under section 20a and that the application seeking approval of the proposed issue was an attempt to effect control of REA by Greyhound without obtaining approval and authorization therefor under section 5 of the Act.

REASONS JUSTIFYING RECONSIDERATION

I.

The findings of Division 3 in the fourth paragraph on sheet 3 do not satisfy the statutory requirements of section 20a(2).

The Commission, in approving issuance of securities, is to determine whether the issuance will be "compatible with the public interest" and whether the issuance "is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public . . ." Section 20(a)(2), 49 U.S.C.A. § 20a(2). Certainly, no transaction violating section 5 of the Interstate Commerce Act, through an unauthorized acquisition of control or the power to control, can be deemed compatible with the public interest or appropriate for or consistent with the proper performance by a carrier of service to the public.

The order of March 15, 1965, states (sheet 2):

> *"It further appearing,* That applicant urgently needs the proceeds of $10,000,000 in its program of acquiring and modernizing terminals and equipment in order to keep operating costs at a reasonable level; that it is handicapped in borrowing to finance capital improvements because of its unfavorable debt-equity ratio; that the proposed issue will improve its ratio as well as reduce to some extent the amount of future borrowing required; that the price of $20 per share is fair and reasonable; and that the expenses of the issue are estimated at $15,000."

[fol. 295] This finding is the only apparent basis for the subsequent finding by Division 3 that the proposed stock issue conforms to the prerequisites to authorization under section 20a(2).

It will be noted that the only party supporting the application in Finance Docket No. 23324 is Greyhound, a non-railroad corporation, while opposition to the proposed issue comes not only from various railroads, some with substantial stock holdings in applicant, but also from bus systems, trucking companies, trucking associations and the Freight Forwarders Institute.

The dominant purpose of the financial provisions of section 20a is to maintain a sound structure for support of railroad credit to aid in developing a national transportation system. *Chicago S. Shore & S. Bend R. R.* v. *United States*, 221 F.Supp. 106, 108 (1963). But, aside from this purpose, it seems clear that the phrase "compatible with the public interest" was intended to embrace the interests of the protestants, which provide essential transportation services to vast areas of the nation. The term "public interest" is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities." *Texas* v. *United States*, 292 U.S. 522, 531 (1934).

Division 3, in approving the proposed stock issue, stresses the need of applicant for additional financing. This narrow view of the proposed stock issue fails to consider the broader intent and purpose of the proposed stock issue and the possible adverse effect upon protestants in providing transportation services to the public. In this respect, it is significant that the sale of 20 per cent of applicant's [fol. 296] stock to Greyhound is not for investment, but for the stated purpose of consolidating operating functions and facilities between applicant and Greyhound. This stated purpose is evident from the fact that as a condition prece-

dent to REA's agreement to sell 500,000 shares of stock to Greyhound the latter agreed to offer to purchase an additional 1,000,000 shares of stock from present shareholders in REA.

Certainly, in the face of the stated purpose of the proposed stock issue, it cannot be said that the proposed issue is "compatible" with the interests of protestants, whether shareholders in REA or not. The mere finding by Division 3 that the applicant is in need of additional financing does not, in light of the overwhelming opposition by protestants representing broad segments of the transportation industry, support its finding that the proposed issue is "compatible with the public interest."

II.

Division 3 erred in not opening its investigation and permitting an oral hearing.

Admittedly, the proposed issue and sale to Greyhound of 500,000 shares of REA's authorized but unissued stock is one step "to consider seriously and work toward a long-term agreement between applicant and Greyhound to consolidate operating functions and facilities." Otherwise, Greyhound would not have coupled its purchase with the offer to buy 1,000,000 additional shares. Petitioners, therefore, submit that the application by itself envisions a plan which could have far reaching effects on the national transportation system and that procedural orderliness requires that a hearing be held at this time for the purpose of cross-examining officers of the applicant, as well as receiving [fol. 297] evidence of protestants. Yet, in the face of the stated long range intention and purpose of applicant and Greyhound, Division 3 summarily granted the application without hearing on the serious questions of unlawful control, or power to control, presented by the facts recited in the order of March 15, 1965.

The denial of an oral hearing here appears to be based on the reasoning that the interest of protestants can be

inquired into by holding a hearing if and when Greyhound voluntarily files an application under section 5. This "piecemeal" treatment may come too late; and in any event constitutes an abdication of the responsibilities vested in the Commission by paragraph (7) of section 5 to take timely and effective action on its own initiative to forestall violation of section 5. The facts here warrant and require a fuller inquiry now by the Commission into the initial acquisition of stock of REA by Greyhound to avoid any disruptive effect the broad plan of REA and Greyhound may have on the services provided by protestants. Precisely what degree of stock ownership constitutes control, or power to control, is a question of fact. Often, elements in addition to the bare extent of stock ownership must be considered and are sometimes of vital significance. The Commission in the past has more than once recognized that a 20 per cent stock ownership under certain circumstances constituted control or the power to control. It is true, as the order of March 15, 1965 herein observes, that "control or power to control must be real and not based on conjecture or remote possibilities." It is equally true, however, and strikingly apposite in the present context, that a finding of no control, or power to control, must rest upon a full exposure of the facts and not, as in the order of March 15, 1965, upon the mere conjecture or assumption there made (sans evi-[fol. 298] dence) that "it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant . . ." Surely, so fundamental a conclusion, ordinarily reached only after the most careful weighing of all pertinent evidence offered, requires for its foundation something more than the mere pleadings filed in the proceeding; significantly, *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 703, 714, relied upon in the portions of the order quoted above, was not decided without hearing.

Conclusion

Petitioners respectfully submit that the order of Division 3 herein is erroneous because its findings are not based on sufficient evidence to satisfy the statutory requirements of section 20a(2) and, therefore, petitioners request that the Commission reconsider its order of March 15, 1965, vacate such order and grant oral hearing for the purpose of receiving additional factual information bearing on the issues involved.

Respectfully submitted,

Clyde W. Fiddes, Harry B. LaTourette, Jeremiah C. Waterman, Thormund A. Miller, By Harry B. LaTourette, Attorneys for Petitioners.

Tyler, Texas, April 13, 1965.

[fol. 299] Certificate of Service (omitted in printing).

[fol. 300]

Before the
Interstate Commerce Commission

Washington, D. C.

Finance Docket No. 23324

[Title omitted]

Petition—Filed April 14, 1965

Comes now Freight Forwarders Institute to file this its petition for reconsideration of the order of Division 3, dated March 16, 1965, in the above-entitled cause. As grounds for such petition it is respectfully shown:

If the Order in Question Is Made Effective It Will Amount to an Abdication of the Commission's Duty to Enforce the Act.

Division 3's order would have been easier to evaluate and understand if the decision had been framed as a report and order, in the usual manner, so that the findings of fact and conclusions of law could be identified as such. "The administrative process will best be vindicated by clarity in its exercise." [1] As it is the findings are set out in [fol. 301] "appearing" paragraphs, and are intermingled with statements of the case. The findings, nevertheless, are capable of being identified and we think that they show, among other things, that the duty of the Commission in the case at bar has been misconceived.

The first finding of consequence made by the order is in the paragraph reading:

> *It further appearing,* That the filing of an application under section 5 of the act is permissive and may not be required by us, see *Seaboard Air Line R. Co. —Merger—Atlantic Coast Line,* 320 I.C.C. 122 (127); that an investigation of whether the proposed transaction, or further prospective agreements between applicant and Greyhound, might violate the provisions of section 5, or section 7 of the Clayton Act, would not be appropriate at this time; and that a hearing is not necessary for a determination of the application for authority to issue said stock under the provisions of sections 20a and 214.

We understand that the Commission has no power to require the filing of an application under section 5, and in our petition of October 20, 1964, herein, which the Division has denied we did not ask the Commission to require the filing of such an application. By the same token, the Commission has no power to require the filing of an applica-

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[1] *Phelps Dodge Corp.* v. *Labor Board,* 313 U.S. 177, 197; *Securities Comm.* v. *Chenery Corp.,* 318 U.S. 80, 94.

tion to institute operations as a carrier subject to the Act, but it most certainly has a duty to prevent the institution of operations *without proper authority* and it has a similar duty to prevent the acquisition of control of one carrier by another without authority. We alleged in our petition that the "broad and important issues raised by this application should not be resolved by the Commission on the [fol. 302] bare facts and allegations set forth in the documents filed by REA." We asked that the matter be set for hearing "for the purpose of exploring fully the question of control of REA by Greyhound which is implicit in the application."

Overruling our request, the Division did resolve the issues on the basis of the facts set forth in the application. In the paragraph quoted above the Division found further that an investigation of whether the "proposed transaction" (this refers not simply to the issuance of stock but to the sale of a 20-percent stock interest in REA to Greyhound) "would not be appropriate at this time." The veiled implication that such an investigation might be appropriate at some other time does not satisfy the mandate that the law imposes upon the Commission. The Division went on, in the same paragraph, to find that "a hearing is not necessary for a determination of the application for authority to issue said stock." We did not ask for a hearing on the question of the issuance of the stock, but upon the consequences thereof, and yet the Division, taking refuge behind the narrow question of stock issuance, necessarily made findings on the broader questions of control on the self-serving and untested statements set forth in the application.

Under Section 12(1) of the Act this mandate is laid down:

> The Commission is hereby authorized and *required* to *execute* and *enforce* the provisions of this part; * * *[2]

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[2] Italics for emphasis is ours throughout.

[fol. 303] Under Section 5(4) it is provided that:

> It shall be unlawful for any person, except as provided in paragraph (2), *to enter into any transaction within the scope of subparagraph (a)* thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained * * *.

It is no answer to the serious allegations that control or the power to control lurks in the involved application to say that the "filing of an application under section 5 of the act is permissive and may not be required" by the Commission. The Commission's "jurisdiction" under Section 20a is "exclusive and plenary" but its jurisdiction and its duty are two entirely different matters. In this case the Division has made an order which is not compatible with the duty of the Commission. That order has the effect of authorizing the applicants in this proceeding to enter into a "transaction" which a very substantial segment of the transportation industry of this country contends may very likely be within the scope of Section 5. Yet those contentions are swept aside without a hearing. This amounts to an abdication of the plain duty of the Commission.

The Findings on Which Division 3 Has Predicated Its Order Are Findings Which Could Properly Be Made Only in a Proceeding Under Section 5 and No Such Proceeding Has Been Instituted.

The Division's order not only authorizes REA to issue 500,000 shares of stock—it authorizes the sale of such stock, [fol. 304] at not less than $20 per share, to "a non-railroad corporation" the name of which, though not used in the ordering paragraph is set forth in the first "appearing" paragraph as The Greyhound Corporation. While this has been handled as a proceeding to issue stock under Section 20a the Division's order is framed as though the proceed-

ing had been brought under Section 5, and in its order Division 3 proceeds to dispose of the Section 5 questions on the untested allegations and representations of the applicants.

In the 12th "appearing" paragraph Division 3's order makes the following statements and findings:

> *It further appearing,* That Greyhound offered to purchase a controlling stock interest, later offered to accept equal stock ownership with the railroads, and finally agreed to purchase the 20-percent stock interest as described; that *it was told in negotiations by representatives of the railroads,* including representatives of dissident railroads, that it would not acquire one additional share under the offer to purchase up to one million shares subject to the right of first refusal by such railroad shareholders; *that the make-up of the board of directors under the by-laws, as amended, would not permit Greyhound to control the board;* that 5 Greyhound directors would face 18 railroad directors, divided into three voting blocs, each having at least as many votes as Greyhound, that 13 railroad or at-large directors would have the power to prevent any action proposed by Greyhound; *that it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant,* and that control or power to control must be real and not based on conjecture or remote possibilities, *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 703 (714);

That the foregoing is not a mere recitation of what Greyhound "was told" by representatives of the railroads, but [fol. 305] is a series of positive findings that no Section 5 violation will result from the approved transaction is made abundantly clear by the 13th "appearing" paragraph, which is as follows:

It further appearing, That if in the future the acquisition of control or power to control, or other matter or transaction to which section 5 of the act applies, becomes imminent or apparent, the opportunity will be available for all interested persons to interpose their opposition; and it appearing that Greyhound has acknowledged the requirements of section 5 in this regard and has stated that it will file a timely application; and that nothing herein shall be construed as a determination of any matter under any section of the act, except sections 20a and 214, as expressly determined herein, or as creating a presumption as to the action which may be taken on any such application under section 5; and

The final "appearing" paragraph, which follows immediately after the two paragraphs quoted next above, is prefaced with the statement that "the said Division so finds." It is perfectly clear, however, that although the quoted 12th and 13th "appearing" paragraphs are not identified as "findings" they nonetheless contain the findings of fact and law on which the Division predicated its conclusions, in the 14th paragraph that:

It further appearing, and the said Division so finds, that the proposed issue by Railway Express Agency, Incorporated, of not exceeding 500,000 shares of common stock of the par value of $1 each, as aforesaid, (a) is for a lawful object within its corporate purposes and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as an express company and a common carrier by motor vehicle, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose:

[fol. 306] Let us examine "appearing" paragraph 12 to determine whether the findings and conclusions stated

therein have evidentiary support and whether, in any event, they were properly made in this Section 20a proceeding.

The first assertion, in paragraph 12, is that Greyhound initiated the negotiations which culminated in this proceeding by offering "to purchase a controlling stock interest" in REA. Failing in its initial efforts to acquire a "controlling stock" interest Greyhound later offered to "accept equal stock ownership" with the railroads. This effort also being fruitless, we are told that Greyhound "finally agreed to purchase the 20-percent stock interest" as described. Since Greyhound admittedly inaugurated the negotiations with control in mind, and retreated step by step to a 20-percent stock interest, is it logical to assume that Greyhound abandoned all thought or hope of control and settled for a mere investment? We think not. There is little in the history of REA operations in the recent past to encourage Greyhound in the belief that such an "investment" would be sound, *per se*. The more logical assumption is that Greyhound adheres to its purpose of gaining control of REA.

The next clause in Paragraph 12 recites what Greyhound was "told" by representatives of the railroads, including the "dissident" railroads. Greyhound, according to the statement, was "told" that it would not acquire one additional share of stock under the offer to purchase up to one million shares subject to the right of first refusal. The [fol. 307] Division evidently accepted this statement of what Greyhound was "told" (which was lifted from the application) as an answer to our contentions that if the involved 20-percent interest does not represent control it is at least a "first step" in a movement to transfer control to Greyhound. We do not think that applicant's statement of what Greyhound was "told" by the railroads is the best evidence of what the facts are. If Greyhound's offer to purchase additional shares of stock is an empty gesture, we are prompted to inquire why the offer was included in the agreement.

The remaining portions of Paragraph 12 consist of findings of fact and law which represent an obvious attempt to dispose of a Section 5 proceeding in a Section 20a case. They do not purport to set out what Greyhound was "told" by representatives of the railroad, but stand as findings made by the Division. The first finding is that:

> * * * the make-up of the board of directors under the by-laws, as amended, would *not permit Greyhound to control the board.*

How could the Division possibly draw such a conclusion from the bare statements made in the application? In the very case cited by the Commission in Paragraph 12, *New York, C. & St. L. R. Co., Control,* 295 I.C.C. 703, the Commission said that: "The existence of control is an issue of fact to be determined not by artificial tests, but by the [fol. 308] circumstances of each case." But the Division has made a determination here by a simple counting of noses.

The next and most astonishing finding made by Paragraph 12 of this Section 20a proceeding is that:

> * * * 5 Greyhound directors would face 18 railroad directors, divided into three voting blocs, each having at least as many votes as Greyhound; that 13 railroad or at-large directors would have the power to prevent any action proposed by Greyhound; that it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant * * *

The foregoing is predicated on a number of assumptions, none of which has been established. It assumes that the railroad directors would vote as a bloc. If we are to deal in assumptions the opposite conclusion would seem to be indicated. If it is not clear in the application it is a matter of common knowledge that certain railroads would have accepted Greyhound's first offer of complete acquisition of REA. If those railroads are still of the same mind,

why would they not vote with Greyhound instead of with the "dissident" railroads?

The order seems to recognize that there are strong directors and directors who are not so strong. It assumes that it is "unlikely" that 5 Greyhound directors would "sway the thinking" of 8 "such directors" of the "calibre normally holding such positions with applicant." Is the Division fully informed as to the "calibre" of REA di- [fol. 309] rectors, and is it in a position to know what "calibre" of directors Greyhound might nominate?

Finally, Paragraph 12 states that "control or power to control must be real and not based on conjecture or remote possibilities." We agree. We seek a hearing in order that it may be demonstrated that the power to control in the situation at bar is real. We assert that the question of control or the power to control may not be dismissed from consideration based on purely self-serving assertions.

The foregoing findings of fact and law have been made by Division 3 as a predicate for its conclusion that the issuance of stock by REA and the sale of that stock to Greyhound "is for a lawful object" and is "compatible with the public interest." Clearly the transaction would not be lawful or in the public interest if it should result in Greyhound obtaining control or the power to control REA. It is equally clear that Division 3 has made findings of fact and law in this proceeding which may only be made in a proceeding under Section 5. Such a Section 5 proceeding has not been instituted and the mandate of Section 5 that the Commission "shall afford reasonable opportunity for interested parties to be heard" has not been observed.

Conclusion

For the reasons set forth herein we respectfully request that the order of Division 3 served herein on March 16, [fol. 310] 1965, be reconsidered and set aside and that the proceeding be set for hearing on the question of whether the proposed transaction will result in Greyhound obtaining control or the power to exercise control of REA, and

that such hearing embrace the further issue, referred to in our petition herein, of the lawfulness of the pooling arrangement between REA and the railroads approved by the Commission in 1959, in the light of the changed circumstances and conditions which would prevail if the application is approved.

Respectfully submitted,

Freight Forwarders Institute, By: Harry C. Ames, 527 Transportation Bldg., Washington, D. C. 20006;

Giles Morrow, 1012 Fourteenth St., N. W., Washington, D. C. 20005, Attorneys.

April 15, 1965

Certificate of Service (omitted in printing).

[fol. 311]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

PETITION FOR RECONSIDERATION OF INTERVENER AND COMPLAINANT SOUTHERN PACIFIC COMPANY—Filed April 14, 1965

Preliminary Statement

By order dated March 15, 1965, served March 16, 1965, Division 3 of the Interstate Commerce Commission authorized Railway Express Agency, Incorporated, to issue not exceeding 500,000 shares of common stock at a par value of $1 each to be sold to The Greyhound Corporation at a price of $20 per share. This order grants the relief requested in the application filed October 7, 1964, assigned Finance Docket No. 23324, as last supplemented November 17, 1964.

Said order also dismissed the complaint filed by Southern Pacific Company in Finance Docket No. 23374, holding, in effect, that the Commission has no jurisdiction to prevent a party from entering into a transaction made unlawful by paragraph (4) of section 5 of the Interstate Commerce Act, and that its jurisdiction is limited to requiring a person to withdraw from such a transaction only after it has been consummated. (This was the sole ground advanced in de-

[fol. 312] fendant The Greyhound Corporation's motion to dismiss.)

No hearing was granted in either proceeding before the issuance of the order.

Petitioner, Southern Pacific Company, believes that said order dated March 15, 1965, is in error and does not correctly state the law, and respectfully urges that the decision be reconsidered.

The order of March 15, 1965, states (sheet 1):

> "*It further appearing,* That the filing of an application under section 5 of the act is permissive and may not be required by us, see *Seaboard Air Line R.Co.—Merger—Atlantic Coast Line,* 320 I.C.C. 122 (127); . . ."

The cited case does not so hold, but merely points out that the *consummation* of a transaction, whether approved in its original form or as modified by the Commission, is permissive and not mandatory. The only reference to the filing of applications under section 5 in the quoted decision is when the Commission properly pointed out that in *merger* proposals the initiative rests with the railroads to present the merger proposal for approval. Naturally, since merger cases involve mutual agreement, there is nothing unusual in leaving the initiative for filing with the parties to the merger agreement. These proceedings do not involve a merger, and any such language is completely inapplicable to the necessity for the filing of an application under section 5 of the Interstate Commerce Act in the instant proceedings.

It is the Interstate Commerce Act itself which gives the [fol. 313] Commission jurisdiction to prevent a party from entering into a transaction made unlawful by paragraph (4) of section 5 of the Interstate Commerce Act. This power is found in paragraph (7) of section 5, which au-

thorizes the Commission "to investigate and determine whether any person is violating the provisions of paragraph (4)". Paragraph (4) makes unlawful two distinct acts: (1) the acquisition of unauthorized control and (2) the continuance of the maintenance of an unauthorized control after it has been acquired. The first sentence of paragraph (4) refers to the *first* of these acts in stating that "it shall be unlawful . . . to enter into any transaction within the scope of [paragraph 5(2)(a)], or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management" without authority. The second sentence of paragraph (4) refers to the *second* of these acts by stating that "it shall be unlawful to continue to maintain control or management accomplished or effectuated . . . ."

Thus, the Commission has the power, under paragraph (7), to investigate and determine whether a person is violating the provisions of paragraph (4) by either engaging in any process of acquiring unauthorized control *or* continuing to maintain such control after it has been acquired. The full Commission made this absolutely clear in its decision in Finance Docket No. 21314, *Southern Pacific Co.—Control—Western Pacific R. Co.*, served February 3, 1965, when it stated (sheet 13):

> ". . . we are authorized by section 5(7) of the act to institute an investigation of a *possible* violation of section 5 . . . ." (Emphasis added.)

[fol. 314] The legislative purpose of section 5(7) was to allow the Interstate Commerce Commission to enforce section 5(4) effectively, even though a prospective applicant might fail to file an application as required. The making of a determination of whether or not there has been a failure to file under section 5 as is required can only be accomplished after hearing and receipt of evidence. In these proceedings the Commission has summarily denied many interveners, plus complainant Southern Pacific Company,

the privilege of presenting evidence to substantiate a possible violation of section 5. Perhaps the best statement to sum up this argument is that made by the Commission in *New York, C. & St.L. R.Co. Control,* 295 I.C.C. 703, 714 (1958):

> ". . . It has been held that the law aims at the acquisition of controlling power and does not await an actual demonstration of such power."

Although Division 3 may very well be aware of the basic principle which has been heretofore stated by this Commission, it takes the position that control or power to control must be real and not based on conjecture or remote possibilities, and yet it seems clear that the only possible way to arrive at such a conclusion of fact is after a hearing and the development of a record to determine what the facts really are. In these proceedings it is perfectly clear that, as a condition precedent to R E A's agreement to sell 500,000 shares of stock to Greyhound, Greyhound agreed to offer to purchase an additional 1,000,000 shares of stock from present shareholders in R E A. Certainly, in the face of these facts, it is difficult to say that the objections of petitioner Southern Pacific Company and other opposing [fol. 315] parties are based on mere "conjecture" and are "remote possibilities".

The order of March 15, 1965, confuses the voluntary filing of an application under section 5 and the clear power of the Commission to investigate under section 5(7) of the Act. The decision points out that it would not be appropriate at this time to make an investigation as to whether the proposed transaction violates the provisions of section 5, and yet, in making such a statement, the Commission can only be relying upon *its* expectation of what might or might not happen in the future. In view of the condition precedent referred to above, it is submitted that this is an improper basis for reaching decisions on questions of fact which should and must in all fairness be based upon evi-

dence and not upon expectations as to events which may or may not occur in the future.

The decision of March 15, 1965, is further inconsistent by pointing out that if in the future the acquisition of control or the power to control, or other matter or transaction to which section 5 of the Act applies, becomes *imminent or apparent,* the opportunity will be available for all interested parties to interpose their opposition; yet this is the very matter that opposing parties have raised at this time, and the Commission has refused to grant a hearing to make the factual determination of whether such acts are imminent or apparent. Furthermore, the very use of this language indicates that the Commission must fully understand that it does have jurisdiction to prevent a party from entering into a transaction made unlawful by para-
[fol. 316] graph (4) of section 5 of the Interstate Commerce Act, and it need not sit idly by waiting until the final act of control is consummated. To take such a position would be tantamount to a court's refusing to take jurisdiction when a person seeks an injunction from bodily harm about to be committed against him, with the explanation, "Wait until the bodily harm takes place and we will then take the matter under consideration." Certainly, no one would argue that this is or should be the law, and yet this is the practical effect of the order of Division 3 dated March 15, 1965.

The order states that applicant urgently needs the proceeds of the sale of stock to acquire modernized terminals and equipment in order to keep operating costs at a reasonable level. Such a contention is not a valid reason or excuse for a violation, or a possible violation, of section 5 of the Interstate Commerce Act. Nor is there any way in which the Commission could make the decision that applicant urgently needs the proceeds for a program of modernization, until evidence has been received upon which such a finding could be based.

It should be noted that the only supporter of the application in Finance Docket No. 23324 is The Greyhound Cor-

poration, while opposition comes not only from various railroads which are owners of stock in R E A but also from bus systems, the American Trucking Associations, Inc., Regular Common Carrier Conference, several other trucking companies, and the Freight Forwarders Institute. In the face of this overwhelming opposition, the Commission has summarily granted the application and dismissed [fol. 317] the complaint of petitioner, Southern Pacific Company, without benefit of a hearing.

It is respectfully submitted that the granting of the application in Finance Docket No. 23324 and the granting of the motion to dismiss in Finance Docket No. 23374 are not based upon sound principles of law, and petitioner, Southern Pacific Company, urgently requests that this Commission reconsider its order of March 15, 1965, vacate such order, grant a hearing, and institute an investigation under section 5(7) to determine whether there has been a violation of section 5(4) of the Interstate Commerce Act.

Respectfully submitted,

Thormund A. Miller, Jeremiah C. Waterman, Charles W. Burkett, W. Harney Wilson, Attorneys for Petitioner, Southern Pacific Company.

San Francisco, Calif., April 12, 1965.

Certificate of Service (omitted in printing).

[fol. 318] [File endorsement omitted]

[fol. 319]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION FOR RECONSIDERATION ON BEHALF OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Filed April 15, 1965

Railway Express Agency (REA) filed an application on October 7, 1964, for authority under Sections 20(a) and 214 of the Interstate Commerce Act to issue 500,000 shares of common stock to be sold to The Greyhound Corporation (Greyhound) at a price of $20 per share. Several railroads (including Santa Fe), motorbus companies, motor carriers, trucking associations and the Department of Justice have intervened.

[fol. 320] Generally, the intervenors have taken the position that the proposed transaction would not be "compatible with the public interest" or "necessary or appropriate for or consistent with the proper performance" by REA of service to the public and that the acquisition of stock would give Greyhound the power to exercise control over REA in violation of Section 5(4). They have asked the Commission to institute an investigation pursuant to Section 5(7) and to hold public hearings on REA's Section 20(a) application. The Department of Justice has asked that the lawfulness of the proposed transaction under Section 7 of the Clayton Act be considered and has requested that a pre-hearing conference be held.

Although the proposed transaction would result in Greyhound being REA's largest single stockholder and despite the fact that the stock issue is coupled with avowed plans to consolidate the operations of REA and Greyhound in a common interest with a view towards ultimate stock con-

trol by Greyhound, Division 3 found that an investigation into the question of unlawful control would not be "appropriate at this time" and, contrary to its disclaimer, that Greyhound's stock ownership would not give it the power [fol. 321] to exercise control over REA. Division 3 also found, without the benefit of evidence and despite the contrary allegations of the intervenors, that the proposed transaction would meet the requirements of Section 20(a) and Section 214. It apparently was felt unnecessary to allow the intervenors an opportunity to support their allegations with evidence.

Protestant, The Atchison, Topeka and Santa Fe Ry. Co., hereby requests Division 3 in its appellate capacity to reconsider its findings and orders in this proceeding.

[fol. 322]

II.

Section 5

Division 3 has found that an investigation into whether the proposed transaction would give Greyhound the power to exercise control over REA contrary to Section 5(4) of the act "would not be appropriate at this time" and then has proceeded to find, somewhat inconsistently, that Greyhound's stock acquisition would not give it such power.*

> "*It further appearing*, That Greyhound offered to purchase a controlling stock interest, later offered to accept equal ownership with the railroads, and finally agreed to purchase the 20-percent stock interest as described; that it was told in negotiations by repre-

* Division 3 disclaims the fact that it has made findings under any section of the act other than 20(a) and 214. However, it has found that the proposed transaction would not give Greyhound the power to control REA's board or at least that such power would not be "imminent" or "apparent". Furthermore, it has found that an investigation under Section 5(7) would not be "appropriate" and has found that the proposed transaction would be "compatible with the public interest" which certainly implies a finding that no violation of Section 5(4) would result from its consummation.

sentatives of the railroads, including representatives of dissident railroads, that it would not acquire one additional share under the offer to purchase up to one million shares subject to the right of first refusal by such railroad stockholders; that the make-up of the board of directors under the by-laws, as amended, would not permit Greyhound to control the board; that [fol. 323] 5 Greyhound directors would face 18 railroad directors divided into three voting blocs, each having at least as many votes as Greyhound; that 13 railroad or at-large directors would have the power to prevent any action proposed by Greyhound; that it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant; and that control or power to control must be real and not based on conjecture or remote possibilities, *New York, C. & St. L. R. Co., Control,* 295 I.C.C. 703, (714)."

The protestant feels that the appropriate time to determine whether unlawful control would result from the proposed transaction would be—at least under the facts of this case where an opportunity for appropriate investigation exists—before that control has been obtained—not after. The mechanism for making an intelligent appraisal of the numerous claims that control would result is readily available in Section 5(7). But given the Division's finding that an investigation would not be appropriate, the protestant is at a loss to understand why it goes on to state that no control would result—and does so without the benefit of evidence.

[fol. 324] In finding that no unlawful control would be imminent or apparent, the Commission relies upon *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 703. The disposition of that case demonstrates with striking clarity that Division 3 has acted improvidently in this case. There the Delaware, Lackawanna & Western applied for authority under Section 5(2) to acquire 14.8 percent of Nickel

Plate's common stock* and, concurrently, filed a motion to dismiss the application on the ground that the Commission lacked jurisdiction since no acquisition of control was involved. The Commission first held a hearing on the motion to dismiss. In ruling on the motion, the Commission made the following observations and findings all of which are directly applicable to the present proceeding.

"The control referred to in section 5 of the act does not require ownership of 51 percent of a corporation's voting stock. It is not to be determined by artificial tests, but is an issue of fact to be determined by the circumstances of each case. *Rochester Teleph. Corp.* v. *United States,* 307 U.S. 125, 144.

* * * * * * *

[fol. 325] "The interveners contend that the purpose of the applicant, if it places two directors on the Nickel Plate board, is to effectuate the control, or at least the management, of the Nickel Plate in common interest with the applicant. Under the provisions of section 5(4) this is unlawful unless authorized as provided in section 5(2), which is specific as to the nature of the transactions which the Commission may approve. Section 5(2) confers no authority on the Commission to approve management in a common interest through the use of common directors or officers unless coupled with control. *Chesapeake & O. Ry. Co. Purchase,* 271 I.C.C. 5, decided May 10, 1948. *If the factual evidence in the proceeding under consideration herein supports a finding of management in a common interest, it also would support a finding of control or the power to control or effectuate control of the Nickel Plate by the applicant.*"

* * * * * * *

"As previously indicated, control has no legal or technical meaning and is an issue of fact to be determined

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* A portion of this stock had been acquired prior to the filing of the application and motion to dismiss.

by the special circumstances of each case. While section 5(4) to (7), inclusive, and section 1(3)(b) indicate the broad outline of the type of transaction sought to be prohibited, or prohibited, unless approved by the Commission, it is left to the latter to judge for itself, *based on the record,* whether the facts warrant a conclusion that the transaction in question, having regard for the actualities of intercorporate relationships, will give a carrier power to exercise control or to participate in accomplishing or effectuating control of another carrier contrary to the act.

[fol. 326] "As heretofore indicated, regulatory commissions and the courts recognize that the amount of power and influence which may be wielded in corporate affairs in many cases is disproportionate to the stock ownership held by those exercising such power. In this case it is sufficient to find that the applicant is in a potential position to effectuate control and that the threat is imminent that control may be obtained and exercised contrary to the act. *It has been held that the law aims at the acquisition of controlling power and does not await an actual demonstration of such power. United States Freight Co.—Investigation of Control,* 39 M. C. C. 623 (636).

* * * * * * *

"*Preliminary findings.*—Predicated upon the facts and law stated herein we find:

"1. That the applicant in its application sets forth various steps which it will take toward partial unification of its properties and those of the Nickel Plate which, if accomplished, would be evidence of its control of the Nickel Plate.

* * * * * * *

"4. That it is generally recognized by the courts and regulatory bodies that a minority membership on a board of directors may, under certain circumstances, control the action of a board.

"5. That the power of the directors elected to the Nickel Plate board by the applicant would be enhanced because the latter is the former's largest stockholder."

* * * * * * *

[fol. 327] "7. That persons to be elected by the applicant to the Nickel Plate board would be affiliated with applicant and may be expected to give sympathetic consideration to its best interest even should that interest conflict with the interest of the Nickel Plate as an independent carrier.

"8. That the applicant acquired Nickel Plate stock not for investment but for the stated purpose of effecting a merger of the two companies, and no change in such purpose is indicated by this record.

"9. That there is little doubt but that the applicant will be working to effectuate control of the Nickel Plate and the record does not show that it will be unable to find the means."

* * * * * * *

"11. That the applicant's ownership of Nickel Plate stock, together with its election of two directors in that company, or possibly more, will place the applicant in a potential position to effectuate control and raise the imminent threat that such control may be obtained and exercised without the approval of this Commission.

"12. That we would not be warranted in disclaiming jurisdiction and finding that control could not be effectuated by the proposal herein when it is conceded by the applicant that the only difference between the presence or absence of the power to control or to effectuate control is in a state of the mind, or the existence or nonexistence of a 'psychology of power,' in the proposed directors." (295 I.C.C. at 141, 155-156, emphasis supplied.)

[fol. 328] The protestant submits that these observations and findings would be appropriate here but suggests that neither the intervenors, the applicant nor Division 3 can be certain unless a record is made.

After ruling on the motion to dismiss, the Commission set the *New York, C. & St. L.* case for hearing on the Section 5(2) application and also instituted an investigation into whether D, L & W's stock purchases had violated Section 5(4). The following language in the subsequent report shows that the Commission's conclusions necessarily were based upon facts of record—not upon an abstract consideration of pleadings:

> "The record and the pleadings in this proceeding are replete with the opposition and hostility of the Nickel Plate to any of the proposals made by the applicant to unify the companies, or to seat any of the applicant's representatives on the board of the Nickel Plate."
>
> * * * * * * *
>
> "The principal question for determination herein is whether such ownership of Nickel Plate stock by the applicant and the elective power it wields has violated or will violate the provisions of Section 5(4) of the Interstate Commerce Act, or Section 7 of the Clayton Act. We found in the prior report that applicant's [fol. 329] ownership of Nickel Plate stock, which would enable election of 2 or possibly 3 directors, would place applicant in a *potential position to effectuate control.* We also made a preliminary finding, among others, that the applicant acquired Nickel Plate stock not for investment but for the stated purpose of effecting a merger of the two companies and at that time no change in such purpose was indicated by that record.
>
> "The applicant's original intent has long been abandoned. It concedes that financially it is in no position to effect a merger of the carriers, nor could one be effected otherwise in view of the hostility of Nickel

Plate's management. Also, as heretofore indicated, applicant has trusteed its holdings by a trust agreement dated December 1, 1955."

* * * * * * *

"Similarly, in *Chesapeake & O. Ry. Co. Purchase,* 261 I.C.C. 239, we authorized, among other things, the acquisition by Alleghany Corporation of control of the Chesapeake & Ohio, the Nickel Plate, the Pere Marquette Ry. Co., and their subsidiaries. At the time of the decision, *Alleghany owned 7.92 percent of the outstanding stock and was in managerial control of the Chesapeake & Ohio by means of support of the other stockholders at elections of directors. Also see Finance Docket No. 19517, Canton R. Co. Control, 295 I.C.C. 822 (Not printed in full),* decided Jan. 29, 1957. The applicant, although the owner of approximately 15 percent of Nickel Plate's outstanding capital stock, has no managerial control over the Nickel Plate.

[fol. 330] "The Nickel Plate fears that, if the applicant elects 2 or possibly 3 strong directors on its board, they may sway the directors who are not so strong, and that their influence would be supported since they represent the holder of the largest single block of stock. There is always some likelihood that strong directors might sway the thinking of directors who are not so strong. *It is extremely doubtful, however, that 2 or 3 strong directors could overcome the unanimous opposition or hostility of 12 or 13 directors of the caliber normally holding such positions with a major railroad.* Certainly, the unanimous and hostile opposition of 12 or 13 directors could easily thwart the aims and desires of 2 or 3 directors. It has been held that the law aims at the acquisition of controlling power and does not await an actual demonstration of such power. *United States Freight Co.—Investigation of Control,* 39 MCC 623. Such control or

power to control, however, must be real and not based on conjecture or remote possibilities as is here indicated." (295 ICC at 713-714, emphasis supplied.)

Thus in *New York, C. & St. L. Ry. Co. Control,* the Commission first ruled on the basis of evidentiary facts that D., L. & W.'s proposal was within the scope of Section 5(2) because there was an intent to manage the companies in a common interest with a view towards ultimate unification and that minority representation on Nickel Plate's board by the largest single stockholder would put D., L. [fol. 331] & W. in a position to effectuate control. Subsequently, the Commission ruled, again on the basis of evidence that plans for unification had been abandoned and that the Nickel Plate's board was unanimously opposed to control by D., L. & W., that no violation of Section 5(4) had taken place.

The protestant feels that *New York, C. & St. L. R. Co. Control* demonstrates clearly the improper disposition of this proceeding by Division 3. It shows a) that a determination of whether a transaction such as that proposed here will result in the power to exercise control cannot be made in the abstract but must be based upon evidentiary facts, b) that the time to make that determination in cases such as the present one is before and not after control has been effectuated and, c) that board representation by the largest single stockholder, even though a minority representation, may result in the power to exercise control, especially when coupled with plans to manage the properties involved in a common interest with a view towards ultimate unification.

It may be noted that the only significant differences between the *New York, C. & St. L.* case and the present pro- [fol. 332] ceeding was the evidentiary showing there that plans for management in a common interest had been abandoned and that there was unanimous opposition to control by Nickel Plate's board. No such showing has been made

here. On the contrary, Division 3 recognizes the existence of plans for management in a common interest and ultimate unification. The endorsement of those plans by REA's board together with its authorization of filing the application involved here demonstrates that REA's board intends to be cooperative and to assist in the realization of those plans.

In *Chesapeake & O. R. Co. Purchase,* 271 I.C.C. 5, the Commission refused to authorize the release to the C&O of a 6.2 beneficial interest in the New York Central held in a voting trust since it would be "tantamount to sanctioning a violation of Section 5(4)." The basis of the Commission's decision was the fact that the *purpose* of the transaction was to enable the C&O to effectuate control or at least management in a common interest which would be unlawful absent Section 5(2) approval. The Commission stated, on page 14, that "one of the purposes for which it (the application) was brought was to effect an association between the New York Central and the Chesapeake & [fol. 333] Ohio in the belief that the community of interest between the two carriers would result great traffic benefits to both." Division 3 recognizes that the same purpose is involved here, yet it finds that no violation of Section 5(4) would result and does so without the benefit of evidence which could be obtained easily under Section 5(7).

The protestant submits that the Division's Section 5 findings are erroneous on their face, directly contrary to authority (especially the authority relied upon), and, in any event, are completely unsupported by evidence. Furthermore, Division 3's attempt to disclaim having made any findings under Section 5 is patently contradicted by its action with regard to the Section 5 allegations of the intervenors and its findings that the proposed transaction would be "compatible with the public interest" under Section 20(a) which, of necessity, implies that the transaction, if effected, would not violate Section 5(4).

[fol. 334] III.

Section 20(a)

Division 3 has found, in accordance with the requirements of Section 20(a), that REA urgently needs the proceeds to be derived from the stock issue,* that the price is fair and reasonable, that the stock issue is compatible with the public interest, and that the proposed transaction is necessary and appropriate. In making these factual determinations, Division 3 has concluded that a hearing is not necessary although numerous parties have challenged the assertions made in REA's application. While Section 20(a)(6) gives flexibility to the Commission in determining whether hearings shall be held on Section 20(a) applications, refusing to hold hearings or permit the introduction of evidence in this case, in which adjudicative facts are drawn into issue by the pleadings, constitutes a capricious abuse of that flexibility which deprives opposing parties of due process.
[fol. 335] In *Philadelphia Co.* v. *SEC*, 175 F.2d 808 (CA DC, 1948), the Court observed:

> "It is elementary in our system of law that adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except wherein each party shall have an opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment...."

In that case, the SEC was not bound by statute to hold a hearing or permit the introduction of evidence, and its action was to formulate a rule which would be "primarily

* Of course, the fact that REA may need capital has no bearing on the lawfulness of the proposed transaction nor is it relevant in determining whether the particular transaction proposed would be desirable.

applicable" to the complaining party. The reasons for holding a hearing in the present case are even stronger since the Commission's action is more clearly judicial in character than was that of the SEC in *Philadelphia Co.* v. *SEC.*

In *Atchison, T. & S. F. Ry. Co.* v. *U.S.*, 284 U.S. 248, the Supreme Court ruled that the Interstate Commerce Commission abused its discretion in failing to grant a petition for rehearing when facts intervening the hearing and the Commission's order had changed so as to make the Commission's [fol. 336] order unresponsive to prevailing conditions. The Court recognized that the Commission has no statutory duty to grant rehearings. However, the Court observed:

> "In the instant proceeding, the hearing accorded related to conditions which had been radically changed, and a hearing, suitably requested, which would have permitted the presentation of evidence relating to existing conditions, was denied. We think that this action was not within the permitted range of the Commission's discretion, but was a denial of right." (284 U.S. at 262.)

In the present case the Commission is not required by statute to hold a hearing nor is it required to permit the introduction of evidence. However, adjudicative facts are in issue. Protestant submits that the Commission's refusal to grant a hearing on the facts of this case is not within the range of its discretion but constitutes a denial of right.

In *Hannah* v. *Larche*, 363 U.S. 440, the Supreme Court discussed the conditions under which administrative agencies must afford parties before them procedural due process:

> "Due process is an elusive concept. Its exact boundaries [fol. 337] are undefinable, and its content varies according to specific factual contexts. *Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the*

procedures which have traditionally been associated with the judicial process." (363 U.S. 420, emphasis supplied.)

These circumstances are present in the instant proceeding.

The protestant submits that Division 3 erred in making factual determinations without the benefit of evidence and in refusing to grant intervenors the opportunity to test the applicant's assertions on cross-examination or to present contrary evidence.

IV.

Conclusion

For the reasons stated above, the protestant requests Division 3, in its appellate capacity, to reconsider the orders issued in this proceeding, to institute an investigation pursuant to Section 5(7) into whether the proposed transaction will result in a violation of Section 5(4) and to set [fol. 338] for hearing REA's application for authority to issue securities.

Respectfully submitted,

Starr Thomas, S. R. Brittingham, Jr., C. George Niebank, Jr., Milton E. Nelson, Jr., 80 East Jackson Boulevard, Chicago 4, Illinois, Attorneys for Protestant.

Due Date: April 15, 1965.

Certificate of Service (omitted in printing).

[fol. 339]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

PETITION FOR RECONSIDERATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY—Filed April 15, 1965

Comes now petitioner and intervening protestant herein, The Denver and Rio Grande Western Railroad Company, and respectfully petitions the Interstate Commerce Commission for reconsideration of its order in Finance Docket No. 23324, dated March 15, 1965. As grounds for this petition for reconsideration it is alleged and stated as follows:

I.

The Denver and Rio Grande Western Railroad Company heretofore timely filed its petition for leave to intervene and protest to the application of Railway Express Agency, Incorporated. Petitioner's interest herein is by virtue of its ownership of 12,456 shares of the common stock of applicant, Railway Express Agency, Incorporated.

II.

By order dated March 15, 1965, served March 16, 1965, Division 3 of the Interstate Commerce Commission au-
[fol. 340] thorized Railway Express Agency, Incorporated, to issue not exceeding 500,000 shares of common stock at a par value of $1.00 each to be sold to the Greyhound Corporation at a price of $20.00 per share. This order grants relief requested in the application filed October 7,

[File endorsement omitted]

1964, assigned Financial Docket No. 23324 as last supplemented November 7, 1964. In addition, the complaint filed by Southern Pacific Company in Finance Docket No. 23374 was dismissed upon the erroneous grounds that the Commission had no jurisdiction to prevent a party from entering into a transaction made unlawful by paragraph (4) of Section 5 of the Interstate Commerce Act. Said order was summarily granted with no hearing held in either proceeding.

III.

The Commission erred in finding that the proposed sale is for a lawful object within its corporate purposes and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as an express company and a common carrier by motor vehicle and that such sale is reasonably necessary and appropriate for such purpose. In effect the Commission found that there was no possibility of control or power to control by the sale of 500,000 shares of stock but such finding was made without considering the effect of Greyhound's position that it would not enter the transaction without the condition precedent that Greyhound agreed to purchase 1,000,000 shares of stock from present shareholders and Railway Express Agency, Incor- [fol. 341] ported. Objections to the transaction filed by protestants cannot be passed off as mere conjecture or remote possibilities without a hearing to develop the true facts. Truly by the consummation of this transaction as proposed by the application Greyhound holds more than a mere option to control Railway Express Agency, Incorporated, it has in fact agreed to purchase control.

IV.

The decision of March 15, 1965, is inconsistent by stating that in the future interested parties may interpose their objections to this transaction if control becomes imminent

or apparent, whereas the order by the Commission in and of itself gives Greyhound the right to control.

Wherefore, said petitioner and intervening protestant prays that the Commission reconsider its order herein dated March 15, 1965, revoke it and set the application for hearing in a consolidated proceeding on the complaint of Southern Pacific Company and thereafter the application be denied.

Respectfully submitted,

T. A. White, Royce D. Sickler, Attorneys for Petitioner, The Denver and Rio Grande Western Railroad Company, Box 5482, Denver, Colorado 80217

Dated this 12th day of April, 1965.

[fol. 342] Certificate of Service (omitted in printing).

[fol. 343] [File endorsement omitted]

[fol. 344]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 23324

[Title omitted]

PETITION OF AMERICAN TRUCKING ASSOCIATES, INC., REGULAR COMMON CARRIER CONFERENCE, AND MOTOR COMMON CARRIERS FOR RECONSIDERATION—Filed April 15, 1965

Come now American Trucking Associations, Inc. (ATA), Regular Common Carrier Conference (Conference), and Denver Chicago Trucking Company, Consolidated Freightways Corporation of Delaware, Missouri Consolidated Freightways Corporation, Illinois-California Express, Inc., Navajo Freight Lines, Inc., Pacific Intermountain Ex-

press Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Ringsby Truck Lines, Inc., Western Gillette, Inc., Interstate Motor Lines, Inc., T.I.M.E. Freight, Inc., and Consolidated Copperstate Lines, and file this petition for reconsideration of the order, served March 16, 1965, of division 3, and as grounds therefor state:

I

Statement of Case

By application filed October 7, 1964, Railway Express Agency, Incorporated (Railway Express), seeks authority under sections 20a and 214 of the Interstate Commerce Act to issue 500,000 shares of common stock, par value $1 per share, to be sold to The Greyhound Corporation (Greyhound) at a price of $20 per share. As a condition prece- [fol. 345] dent to Railway Express's agreement to sell the 500,000 shares, Greyhound had to offer to buy an additional 1,000,000 shares of its outstanding stock. Railway Express's charter authorizes it to issue 2,576,000 shares of common stock, of which 1,999,188 shares are outstanding and owned by 60 railroads. The proposed issuance of the 500,000 shares of stock will thus bring Railway Express's total outstanding shares of stock to 2,499,188. Should Greyhound acquire the 500,000 shares, 20 percent of Railway Express's stock, and succeed in buying the 1,000,000 additional shares from the railroads, it would then own 60 percent of Railway Express's stock and control the company.

ATA, Conference, 12 motor common carriers, National Trailways Bus System, 17 motorbus companies, Freight Forwarder Institute, and 5 railroad stockholders of Railway Express filed petitions with the Commission for leave to intervene in opposition to the application, and Greyhound filed a petition for leave to intervene in support of the application. Besides protesting the application we

sought, as did several other opposing intervenors, to have the Commission consider Railway Express's application under section 5 of the Act.

A petition for leave to intervene was also filed by the Department of Justice, requesting the Commission to institute a proceeding to determine the lawfulness of the stock transaction under section 7 of the Clayton Act, and to consolidate Railway Express's application to issue the 500,000 shares of common stock for consideration with such a proceeding. And Southern Pacific Company, an opposing railroad stockholder, filed a complaint asking the Commission to invoke the provisions of section 5(7) of the Act and, after hearing and investigation, to require Railway Express to cease and desist from consummating the proposed transaction.

Railway Express replied to the protests and petitions for leave to intervene in opposition to its application, urg- [fol. 346] ing primarily that its application be approved without further proceedings. In addition, Railway Express and Greyhound filed motions to dismiss and answers to the complaint of the Southern Pacific Company. Southern Pacific Company, in turn, replied to the motions to dismiss. The Commission granted all the petitions for leave to intervene.

By order served March 16, 1965, division 3 found that the issuance of the 500,000 shares of common stock was lawful under sections 20a and 214, authorized Railway Express to issue the shares of stock, and provided an effective date 35 days from the date of service of the order. Division 3 summarily rejected intervenors' arguments in opposition to the application and found further that a hearing was not appropriate at this time to investigate whether the transaction might violate the provisions of section 5 of the Act and section 7 of the Clayton Act. It dismissed the complaint filed by the Southern Pacific Company.

II

Division 3 Erred in Granting Railway Express's Application to Issue Its Stock Without Holding a Hearing to Determine Whether the Issuance of Such Stock is Lawful Under Sections 20a, 214, and 5

Section 20a provides in part that the Commission shall authorize the issuance of securities by a carrier such as Railway Express only if it finds that such issue: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate [fol. 347] for such purpose.[1]

In our petitions for leave to intervene and protests, we asked that a hearing be held in this proceeding to determine whether the issuance of stock conforms to the statutory requirements of sections 20a and 214, and to explore the question of control of Railway Express, implicit in the application. As noted previously, division 3 denied our request for a hearing and granted the application solely on the basis of the pleadings. It is our position that division 3 erred in granting the application without holding a hearing so that all the circumstances and details regarding the proposed transaction could be established. It is our position further that division 3 has decided this proceeding, one of general transportation importance, on an incomplete record, and that opposing intervenors have been denied a fair opportunity to present their case in opposition to the application.

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[1] Section 214 provides, as pertinent here, that the issuance of securities by carriers subject to part II shall be subject to the provisions of section 20a. It is, therefore, the requirements of section 20a which must be met by Railway Express to warrant a grant of its application.

This proceeding does not involve a routine request by a carrier for authority to issue 500,000 shares of its authorized but unissued shares of common stock. Railway Express's proposed stock issuance is but one part of a single agreement between Railway Express and Greyhound whereby Greyhound has offered to buy control of Railway Express from the railroads. The circumstances and details of a transaction of this magnitude certainly cannot be presented in the form of pleadings. Oral hearing is essential for a full disclosure of all the relevant facts. Thus division 3, in failing to hold such a hearing, has deprived itself of a complete record.

It was impossible, moreover, for division 3 to apply properly the standards of section 20a without a hearing. This is [fol. 348] so for two reasons. First, our petitions for leave to intervene and protests were designed only to show our interest in this proceeding, and to alert the Commission that there was presented here a question as to whether the issuance of stock was for a lawful purpose. Although we alleged in our pleadings, as did other opposing intervenors, that the proposal was unlawful, we did not present in detail the grounds to support our allegations, and nothing in the Commission's General Rules of Practice required us to do so. Rather, we fully expected that the Commission would set the application for hearing, at which time we could have shown specifically how the proposal violates the Act. The division, in deciding that the application should be granted without a hearing, has accordingly deprived us of a fair opportunity to indicate in what manner the proposal does not meet the requirements of section 20a. In doing so, we submit it has also failed to give full consideration to the standards of section 20a, because the extent to which the issuance is not in compliance with that section has never been presented to it for consideration.

Furthermore, whether the proposal is in the public interest, as required by section 20a, plainly cannot be resolved without a hearing. To illustrate, Railway Express operates

pursuant to an operating agreement with the railroads which has been approved by the Commission. Since Railway Express is wholly owned by the railroads, the Commission apparently deems it to be in the public interest to permit Railway Express and the railroads, under this agreement, to pool traffic and revenues, and for Railway Express to pay the railroads only their out-of-pocket costs when using them as its underlying carriers. Whether it will continue to be in the public interest to permit this arrangement should Greyhound acquire control of Railway Express, or a substantial interest in the company, is a question which cannot be answered without a hearing.

[fol. 349] It must be decided, too, whether it is in the public interest to permit Greyhound, the nation's second largest transporter of express traffic, to acquire control of Railway Express, the largest transporter of express traffic, since such control would give Greyhound a virtual monopoly of the country's express traffic. And if Greyhound should acquire less than a majority interest in Railway Express, it still would have a sufficient equity interest to enter into mutually advantageous agreements, the result of which would be to substantially lessen competition.

From the foregoing it is plain that the myriad questions raised by the instant application are such that only by holding a hearing to develop a comprehensive record can they be resolved correctly.

To sum up, the regulated motor carrier industry is greatly interested in the outcome of this proceeding because regulated motor corriers are gravely threatened by Railway Express's program of expansion into the general trucking field. We fear that if the proposed transaction is consummated, the combination of Greyhound's and Railway Express's vast financial resources and nationwide operating facilities will enhance Railway Express's competitive position and stimulate further its campaign to become a general freight carrier. It is vital, therefore, that oral hearing be held to afford an opportunity to show that the transaction under consideration is not in the public interest

and is otherwise unlawful. Thus, we urge that it was error to grant the application without holding a hearing, that the order granting the application should be vacated, and the application set for hearing.

III

Division 3 Erred in Finding That the Proposed Transaction Would Not Result in Greyhound's Acquiring Control of Railway Express

Division 3 found that the instant transaction would not [fol. 350] result in Greyhound's acquiring control or power to control Railway Express. It based its findings upon the fact that the involved 500,000 shares of stock represents only a 20 percent interest in Railway Express, and the allegation that representatives of dissident railroad stockholders had indicated that Greyhound would not acquire one share under its offer to buy up to 1,000,000 additional shares, since all outstanding stock is subject to their right of first refusal. It was also of the opinion that the make-up of Railway Express's board of directors prevented Greyhound from acquiring control of Railway Express. This is for the reason that the 500,000 shares of stock would enable Greyhound to elect only 5 directors at-large, and they would supposedly face 18 railroad directors divided into three voting blocks, each having as many votes as Greyhound. It is unlikely, according to division 3, that those 5 Greyhound directors could sway the thinking of 8 railroad directors so as to enable Greyhound to acquire control of Railway Express. But these are all suppositions based on untested hypotheses, which do not meet applicant's burden of proof.

It is well-settled that whether one company has acquired control of another is an issue of fact to be determined by the special circumstances in each case. *Rochester Telephone Corp.* v. *United States,* 307 U.S. 125. Thus whether Greyhound's acquisition of a 20 percent interest in Railway Express will result in its acquiring control of Railway Ex-

press or not, is a factual question. Although it is difficult to answer this question because of the incomplete record in this proceeding, there is nevertheless sufficient evidence to refute division 3's finding that Greyhound would not acquire control of Railway Express should it acquire the 500,000 shares of stock.

If Greyhound succeeds in obtaining the 500,000 shares of stock from Railway Express, it will be, with a 20 percent [fol. 351] interest, the largest single stockholder of Railway Express. The Commission has recognized control to exist with ownership of less than 10 percent of the outstanding voting stock. *Louisville & J. B. & R. Co. Merger*, 290 I.C.C. 725. See also, *United States* v. *Union Pacific R.R. Co.*, 226 U.S. 61. But, aside from the percentage of stock ownership Greyhound would hold, it must be kept in mind that Greyhound is not buying such stock merely for investment purposes; it expects to consolidate its facilities with those of Railway Express and to provide an improved service. It can hardly be supposed that management as astute as Greyhound's is going to spend a large sum of money in acquiring stock and in integrating its facilities with Railway Express, unless it expects to control Railway Express outright or it has been assured that it will be able to influence strongly Railway Express's operations.

As to the division's finding that, because of the preponderance of railroad directors and block voting, it was unlikely that Greyhound could control Railway Express, we submit that such a conclusion is unsound. The decision falsely assumes that the railroad stockholders will stand shoulder to shoulder and vote as a unit. There is nothing in the record to suggest that the railroads will vote as a unit, let alone against Greyhound. On the contrary, since over 80 percent of the railroad stockholders voted to accept Greyhound's offer to buy control of Railway Express, it is reasonable to expect that a majority of such stockholders would support Greyhound's managerial aims, and that they would vote in support of its policies. Thus even though Greyhound would be a minority stockholder, it is

possible for it to control Railway Express by virtue of the acquiescence of sympathetic railroad owners of a substantial amount of Railway Express stock.[2] And that this is [fol. 352] likely to happen is buttressed by the opposition of the dissident railroads, which allege in their pleadings that the instant proposal will result in Greyhound's acquiring control of Railway Express. Since those railroads were parties to the confidential discussions of the board of directors of Railway Express concerning the proposed transaction, their statements and opposition should be accorded great weight.

All in all, we submit that whether Greyhound will actually acquire control of Railway Express through the transaction now before the Commission cannot be resolved accurately on the basis of the information so far made available to division 3. Oral hearing obviously is necessary to determine the true situation.

Prayer

For the reasons stated, ATA, Conference, and motor common carriers respectfully request that division 3 vacate its order, served March 16, 1965, granting the application of Railway Express to issue 500,000 shares of its common stock, and that it order this proceeding to be set down for hearing in order to determine whether the proposed issuance is in fact in conformity with the requirements of sections 20a, 214, and 5 of the Act, Congress's national transportation policy, and section 7 of the Clayton Act.

[fol. 353] Respectfully submitted,

Denver Chicago Trucking Company, Inc., Consolidated Freightways Corporation of Delaware, Missouri Consolidated Freightways Corporation, Illinois-California Express, Inc., Navajo Freight Lines, Inc., Pacific Inter-

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[2] Cf., *Abramowitz—Investigation of Operations*, 94 M.C.C. 213; *Furniture Forwarders, Inc., F.F. Application*, 316 I.C.C. 615; and *Colletti—Control—Comet Freight Lines*, 38 M.C.C. 95.

mountain Express Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Ringsby Truck Lines, Inc., Western Gillette, Inc., Interstate Motor Lines, Inc., T.I.-M.E. Freight, Inc., Consolidated Copperstate Lines, David Axelrod, Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603, Eugene T. Liipfert, 1035 Universal Building North, Washington, D. C. 20009.

American Trucking Associations, Inc., Peter T. Beardsley, William R. Rubbert, Harry J. Jordan, Paul D. Borghesani, Richard R. Sigmon, 1616 P Street, N. W., Washington, D. C. 20036.

Regular Common Carrier Conference, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036, Roland Rice, Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

Certificate of Service (omitted in printing).

[fol. 354] Service Date April 21, 1965

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Finance Docket No. 23324

[Title omitted]

Finance Docket No. 23374

[Title omitted]

Order of March 15, 1965

NOTICE TO THE PARTIES—April 16, 1965

The outstanding order in the above-entitled proceedings not yet having become effective, and petitions for reconsideration of such order having been filed on or before April 15, 1965, in Finance Docket No. 23324, by inter-

veners, American Trucking Associations, Inc., Freight Forwarders Institute, The Atchison, Topeka and Santa Fe Railway Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, Southern Pacific Company, and Transcontinental Bus System, Inc., et al., and in Finance Docket No. 23374, by complainant, such order is, pursuant to section 17(8) of the Interstate Commerce Act, stayed pending disposition of the matter.

Bertha F. Armes, Acting Secretary.

[fol. 355] [File endorsement omitted]

[fol. 356]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Finance Docket No. 23324

[Title omitted]

Finance Docket No. 23374

[Title omitted]

REPLY OF RAILWAY EXPRESS AGENCY, INCORPORATED, TO ALL PETITIONS FOR RECONSIDERATION OF THE ORDER OF DIVISION 3 SERVED ON MARCH 16, 1965—Filed April 30, 1965

On October 7, 1964, Railway Express Agency, Incorporated ("REA") initiated this proceeding by filing with the Interstate Commerce Commission an application (assigned Finance Docket No. 23324) under Sections 20a and 214 of the Interstate Commerce Act for authority to issue 500,000 shares of REA's Common Stock, par value $1 per share, to The Greyhound Corporation ("Greyhound") pursuant to the terms and conditions set forth in the application. [fol. 357] Subsequently, various parties filed petitions to

intervene in this proceeding and requested a hearing and other proceedings, and Southern Pacific Company filed a complaint against REA and Greyhound (assigned Finance Docket No. 23374) under Section 5 of the Interstate Commerce Act. By order of Division 3 dated March 15, 1965, and served on March 16, 1965 ("the Division 3 Order"), Division 3 found that the proposed stock issue by REA satisfied the standards set forth in Sections 20a and 214* of the Interstate Commerce Act, authorized the proposed issue pursuant to Section 20a, denied the petitions of intervenors for a hearing and other proceedings and dismissed the complaint in Finance Docket No. 23374. Prior to the effective date of the Division 3 Order, petitions for reconsideration thereof were filed by the intervenors listed in Part II of the Appendix to the Division 3 Order and, pursuant to Section 17(8) of the Interstate Commerce Act, the Division 3 Order was stayed pending disposition of such petitions for reconsideration.

REA files this Reply to all Petitions for Reconsideration to show that the Division 3 Order was correct as a matter of fact, as a matter of law and as a matter of administra- [fol. 358] tive discretion. Division 3 correctly found that the proposed stock issue satisfies the standards set forth in Section 20a of the Interstate Commerce Act, which finding is amply supported by the record in this proceeding. Division 3 properly denied as premature the petitions to conduct an investigation under Section 5 of the Interstate Commerce Act and to consolidate this Section 20a proceeding with a proceeding under Section 5 of the Interstate Commerce Act and/or Section 7 of the Clayton Act. Division 3 properly denied, pursuant to express statutory authority, the various petitions for a hearing in this Section 20a proceeding and such denial of hearing has not injured the intervenors.

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* For the sake of brevity, Sections 20a and 214 of the Interstate Commerce Act will be hereinafter collectively referred to as "Section 20a".

The petitions for reconsideration of the Division 3 Order are without merit and should be denied, and the Division 3 Order should be permitted to become effective as soon as possible.

I.

Division 3 Correctly Found That the Proposed Stock Issue Satisfies the Standards of Section 20a of the Interstate Commerce Act.

The only issue properly before the Interstate Commerce Commission in this proceeding is whether the proposed stock issue by REA

> (a) is for some lawful object within REA's cor- [fol. 359] porate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by REA of service to the public as a common carrier, and which will not impair its ability to perform that service, and
>
> (b) is reasonably necessary and appropriate for such purpose.

The object of the proposed stock issue and the reasons why such issue satisfies the standards set forth in Section 20a were set forth under oath by REA in its application and supporting documents filed herein. On the basis of that record, Division 3 stated, in the Division 3 Order, that

> *"It further appearing,* That applicant urgently needs the proceeds of $10,000,000 in its program of acquiring and modernizing terminals and equipment in order to keep operating costs at a reasonable level; that it is handicapped in borrowing to finance capital improvements because of its unfavorable debt-equity ratio; that the proposed issue will improve its ratio as well as reduce to some extent the amount of future borrowing required; that the price of $20 per share is

fair and reasonable; and that the expenses of the issue are estimated at $15,000.

". . .

"*It further appearing,* and the said Division so finds, that the proposed issue by Railway Express Agency, Incorporated, of not exceeding 500,000 shares of common stock of the par value of $1 each as aforesaid (a) is for a lawful object within its corporate purposes and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public [fol. 360] as an express company and a common carrier by motor vehicle, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose:

". . .

"*It is further ordered,* That Railway Express Agency, Incorporated, be, and it is hereby, authorized to issue not exceeding 500,000 shares of common stock of the par value of $1 each, to be sold to a non-railroad corporation at a price of not less than $20 per share."

Those findings of Division 3 are amply supported by the record made in this proceeding and should not be disturbed.

The proceeds of $10,000,000 from the issuance of 500,000 shares of Common Stock of REA will be applied by REA for the purpose of (a) reimbursing REA in part for cash expenditures made from retained earnings of REA for additions and betterments or other capital expenditures, and (b) to provide funds for required additional capital expenditures to be made by REA in the future. The issuance and sale of the 500,000 shares of Common Stock of REA will also have the effect of bringing about a more normal balance between REA's funded debt and its capital stock and this improved relationship will be of benefit to REA in financing its future requirements.

REA had no retained earnings until July of 1961, when the Standard Express Operations Agreement between REA and the railroad carriers parties thereto was amended to [fol. 361] put REA on a profit and loss basis. In 1960, REA began a capital improvement program; prior to that time, REA had either leased the major portion of its facilities or used facilities owned by other carriers. From 1960 through August 20, 1964, REA expended a total of $16,936,938 for capital expenditures in connection with the acquisition and modernization of terminals. During the same period REA borrowed for such purposes a total of $8,500,000 and thus was required to finance from internally generated funds (*e.g.*, earnings, depreciation, etc.) the balance of such capital expenditures, namely, $8,436,938, plus the payments on that portion of the loans repaid. In view of REA's short history of profitable operations, it has not, of course, been easy for REA to effect this long overdue capital improvement program.

The additional capital expenditures required to complete the unfinished terminal projects referred to in the preceding paragraph are estimated at $3,536,289. Moreover, as set forth in Exhibit 3 to REA's application herein, in addition to the fiscal 1965 automotive program, REA's anticipated capital expenditures on new terminal projects for the fiscal year July 1964-June 1965 are in excess of $14,000,000.

[fol. 362] The proceeds of the issuance of Common Stock by REA will be of immeasurable assistance to REA in financing its capital program and will be applied thereto. Such areas of expenditure are obviously crucial to maintaining and improving REA's service to the public as an express company, yet it appears that retained earnings will not provide sufficient capital to permit REA to make such expenditures and comparable expenditures in future years without borrowings. Such borrowings will be increasingly difficult if REA does not improve its debt to equity ratio. As can be seen from the financial statements submitted by

REA herein, REA's total equity and surplus are approximately $10,000,000 and REA's debt to equity ratio is approximately 7 to 1. Addition of the $10,000,000 proceeds of the proposed stock issue to REA's equity would obviously, in and of itself, improve substantially REA's financial position.

The foregoing facts are a part of the record of this proceeding and have been recited herein briefly by REA merely to illustrate that there is more than an adequate basis in the record in this proceeding for the finding in the Division 3 Order that the proposed stock issue satisfies the standards of Section 20a of the Interstate Commerce Act. Significantly, none of the intervenors has seen fit to challenge the facts sworn to by REA in its application herein. In [fol. 363] fact, the intervenors do not appear seriously to question that the proposed stock issue will be of benefit to REA; their concern is with the benefit of the proposed stock issue to the purchaser of the stock (which, as hereinafter discussed, is irrelevant in this Section 20a proceeding).

II

Division 3 Properly Deferred as Premature the Petitions of Intervenors for Investigation of Their Allegations That the Proposed Stock Issue Would Result in Harmful Effects Upon Competition and "Control" of REA by Greyhound.

Division 3 properly denied the petitions of intervenors for an investigation of their allegations that the proposed stock issue would result in harmful effects upon competition and in "control" of REA by Greyhound. The questions of effect upon competition and control are not only irrelevant in this Section 20a proceeding but are premature in respect of all other aspects of this case, for the proposed stock issue, in and of itself, could not result in harmful effects upon competition or in control of REA by Greyhound.

A. Questions of effect upon competition and "control" are irrelevant in this Section 20a proceeding.

Under Section 20a, the jurisdiction of the Commission is [fol. 364] limited to an investigation of whether a proposed issue will maintain or improve the proper performance *by the applicant* of service to the public as a common carrier. The purpose of Section 20a is to protect an issuing carrier against jeopardizing its ability to render service to the public through improvident security issues. It is not the purpose of Section 20a to regulate "to whom" securities are issued by carriers.

That the jurisdiction of the Commission under Section 20a is limited to the effect of the proposed stock issue upon the issuing carrier and to the maintenance of the integrity of carrier securities is borne out by the legislative history of Section 20a and judicial decisions interpreting it:

> "The dominant purpose of the financial provisions of Section 20a is to maintain a sound structure for support of railroad credit through aid in developing a national transportation system. Indirectly, these provisions were also designed to protect the investing public against faulty or dishonest financing which could result in dissipation of railroad resources and thus to promote confidence of investors in railroad securities." *Chicago S. Shore & S. Bend R. R.* v. *United States,* 221 F. Supp. 106 (108). See Sharfman, *The Interstate Commerce Commission,* Vol. I, 189-195.

That the jurisdiction of the Commission under Section 20a is not broad enough to encompass the issues posed under Section 5 of the Interstate Commerce Act was admitted in the petition dated October 21, 1964, of intervenors Transcontinental Bus System, Inc., *et al.,* to requiring filing under [fol. 365] Section 5, Interstate Commerce Act, and to consolidate, wherein the following appears:

> *"The acquisition by Greyhound of 20% of R.E.A.'s common stock would not normally be considered as con-*

trol, but, such acquisition does present a serious question, to-wit: 'Whether Greyhound should be allowed to consolidate its facilities and operations with those of R.E.A.' A proper determination of this question will require the presentation and consideration of broad issues—issues pertaining to the National Transportation Policy. *The issues pertinent under Sections 20a and 214 are limited and narrow and are insufficient for this purpose.*

"... *Unlike Sections 20a and 214,* Section 5 does allow, and in fact makes specific provision for, the presentation of the issues necessary for a determination of the question as to whether or not Greyhound should be allowed to consolidate its facilities and operations with those of R.E.A." (Emphasis supplied.)

Division 3 denied such petition to require a filing by Greyhound and REA of an application under Section 5, stating in the Division 3 Order: "That the filing of an application under section 5 of the act is permissive and may not be required by us, see *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line,* 320 I.C.C. 122 (127)".

Intervenor Southern Pacific Company, in its petition for reconsideration, challenges that portion of the Division 3 Order as follows:

"The cited case does not so hold, but merely points out that the *consummation* of a transaction, whether approved in its original form or as modified by the Commission, is permissive and not mandatory."

REA submits that the citation by Division 3 to the *Seaboard* [fol. 366] case was proper. The *Seaboard* case does state that the consummation of a transaction involving a merger is permissive and not mandatory, as intervenor Southern Pacific Company states. But the *Seaboard* case further declares—and it was for this that Division 3 cited it—that Section 5 of the Interstate Commerce Act gives to carriers

"the initiative to formulate and present for our approval specific merger proposals". *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line R. Co.*, 320 I.C.C. 121, 127 (1963). That the Commission was speaking of merger applications in the *Seaboard* case is not significant. The point is that applications under Section 5 of the Interstate Commerce Act—whether for merger or control—must originate with the parties and cannot be compelled by the Commission. The abortive attempt of Congress to entrust the Commission with the task of compelling railroad mergers and consolidations was abandoned in the Transportation Act of 1940 when Section 5 was enacted in its present form. That "the Commission has no power to require the filing of an application under section 5" was admitted in the petition for reconsideration dated April 15, 1965, filed herein by Freight Forwarders Institute.

Finally, it should be noted that the Division 3 Order does not purport to authorize to whom the proposed stock issue is to be made. The Division 3 Order states that REA is authorized to issue not exceeding 500,000 shares of its [fol. 367] common stock of the par value of $1 each, "to be sold to a non-railroad corporation". REA submits that this is an indication of the proper scope of the Commission's jurisdiction under Section 20a.

B. The proposed stock issue will not produce an effect upon competition.

There certainly can be no basis for the assertion that the mere issuance by REA of the stock which is the subject—and the only subject—of this proceeding will produce an effect upon competition. As to the future, it is true that REA and Greyhound *may* make a study of, and possibly effect, certain economies. As the resolution adopted by the Board of Directors of REA states, however, this is only an "intention" and even this "intention" is conditioned in the resolution on such economies being "lawful". The purchase by Greyhound of a $10,000,000 interest in REA cannot in itself be a violation of Section 7 of the Clayton Act

or result in an effect on competition. If any "economies" are made in the future which any party aggrieved considers "unlawful", such party will have an adequate forum at that time to challenge them.

The United States Justice Department, which filed a petition herein requesting the Commission to conduct an investigation under Section 7 of the Clayton Act, has not [fol. 368] requested reconsideration of the Division 3 Order denying such petition. Such failure to petition for reconsideration is significant in view of the Justice Department's strong position on the need to enforce Section 7 of the Clayton Act whenever an effect upon competition is threatened. REA submits that such failure to file a petition for reconsideration can only be explained by the acceptance by the Justice Department of the facts that (a) the proposed stock issue does not, in and of itself, raise any question of an effect upon competition and (b) should REA and Greyhound in the future ever consolidate services or facilities to an extent deemed unlawful by the Justice Department, the Justice Department will be free to move at that time against REA and Greyhound under Section 7 of the Clayton Act or any of the other antitrust laws.

C. The proposed stock issue will not give Greyhound control of REA.

Division 3 stated, in the Division 3 Order:

> *"It further appearing,* That Greyhound offered to purchase a controlling stock interest, later offered to accept equal stock ownership with the railroads, and finally agreed to purchase the 20-percent stock interest as described; that it was told in negotiations by representatives of the railroads, including representatives of dissident railroads, that it would not acquire one additional share under the offer to purchase up to one million shares subject to the right of first refusal by such railroad shareholders; that the make-up of the board of directors under the by-laws as amended,

would not permit Greyhound to control the board; that [fol. 369] 5 Greyhound directors would face 18 railroad directors, divided into three voting blocs, each having at least as many votes as Greyhound; that 13 railroad or at-large directors would have the power to prevent any action proposed by Greyhound; that it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant; and that control or power to control must be real and not based on conjecture or remote possibilities, *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 703 (714)".

The foregoing statements by Division 3 are correct and are amply supported by the record in this proceeding. In the fact of such facts, the petitions for reconsideration which allege that the proposed stock issue will give Greyhound control of REA must be dismissed as frivolous. REA submits that Division 3's conclusion that the proposed stock issue will not give Greyhound control or power to control REA may be supported by at least the following reasons:

First, the 20% interest to be acquired by Greyhound is, of course, a minority interest which in and by itself will not permit control or the power to control.

Secondly, the By-laws of REA, as amended, provide that 18 out of the 25 directors of REA are to be nominated by the railroad stockholders and that only 20% of the directors (or 5 of the 25 directors) may be nominated by Greyhound. The other two directors are nominated by management.

In that connection, the history of REA must be remem- [fol. 370] bered. Throughout the existence of REA it has been controlled by railroads who have owned all the stock of REA and, through the Standard Express Operations Agreement, supplied REA with rail transport and shared in REA's profits and losses. The acquisition of stock and

representation on the Board by a non-railroad stockholder —the first such stockholder in the history of REA—will not change the fact of railroad control.

In addition, the remaining stock of REA will not be completely scattered amongst small shareholders. There are only 60 stockholders of REA, all of which are railroad companies and some of which hold substantial interests.

It is also important to realize that representation on REA's Board is allotted by REA's Charter and By-laws to three railroad districts as follows: the Eastern District (which holds 1,085,748 shares of REA) with the right to nominate 7 directors, the Western District (which holds 633,180 shares of REA) with the right to nominate 6 directors and the Southern District (which holds 280,260 shares of REA) with the right to nominate 5 directors. The railroad company stockholders of REA are thus consolidated for voting purposes into three blocs for election of the Board, each of which has the right to nominate at least as many directors as Greyhound under the By-laws. It is [fol. 371] also important to remember that such method of electing directors to the Board of REA may not be changed without the vote of two-thirds of the stock issued and outstanding.

In summary, therefore, it is clear that the acquisition by Greyhound of 20% of the stock of REA will give to Greyhound a 20% investment in REA and nothing more. Greyhound will not have the power to elect more than 20% of the Board of REA and will not be able to compel changes in the Standard Express Operations Agreement or in the Charter or By-laws of REA or in REA's methods of operations. In no practical sense, therefore, could Greyhound be said to control or have the power to control REA. In the face of such facts, Division 3 correctly concluded that "control or power to control must be real and not based on conjecture or remote possibilities, *New York, C. & St. L. R. Co. Control*, 295 I.C.C. 703 (714)." Even the Justice Department in its petition to intervene in this proceeding admitted that it "does not at this time take the position that the transaction will result in such control".

Several of the intervenors have alleged that the "Nickel Plate" case cited by Division 3 does not support the Division 3 Order but rather suggests that the acquisition of 15% of a carrier's stock, plus the right to elect two or three out of 15 directors, constitutes control. On closer examination, however, it will be seen that the *Nickel Plate* case does [fol. 372] in fact support the Division 3 Order. In the *Nickel Plate* case, not only did the acquiring carrier own more stock than the next six largest stockholders combined, but the acquiring carrier admitted that such stock was acquired with the intent to merge. Those facts are obviously not present in this proceeding.

Several of the petitions for reconsideration raise again the issue of possible control of REA by virtue of Greyhound's offer to acquire 1,000,000 additional shares of REA stock from REA stockholders. The answer to that allegation remains the same as before: Greyhound does not and will not have the *right* to purchase *any* stock from REA stockholders; Greyhound has agreed—at the insistence of REA—to accept tenders of up to 1,000,000 shares from REA stockholders, subject to the right of first refusal in other stockholders and to all necessary governmental approvals. In fact, the railroad stockholders of REA filing petitions for reconsideration herein have it in their power to prevent Greyhound from purchasing any stock from REA stockholders and the representatives of certain railroad stockholders have repeatedly stated their intention to do so. Whether additional purchases, if any, of REA stock by Greyhound will in the future give Greyhound control of REA is a question not presented by this application and Division 3 wisely refused to be drawn into a consideration [fol. 373] of such premature, conjectural issues.

There is a suggestion in several of the petitions for reconsideration that control will result from the proposed stock issue because of collusion between several of the railroads and Greyhound. There are no facts alleged in such

petitions for reconsideration as a basis for any such collusion and no purpose for such collusion has been alleged. REA submits that such allegations constitute baseless speculation and indicate the weakness of the case of those alleging that the proposed stock issue would give Greyhound control of REA.

In the petition for reconsideration of the Division 3 Order filed by Freight Forwarders Institute, there again appears a rather curious attempt to use an allegation of "control" to re-examine the Standard Express Operations Agreement approved in *Express Contract, 1959* (Docket No. 33140). That allegation, like all others bottomed on the "control" issue, is premature at this time and ought not to be allowed to confuse this Section 20a proceeding.

Several of the intervenors challenge as "conjectural" the statement in the Division 3 Order that "it is unlikely that 5 Greyhound directors could sway the thinking of 8 such directors of the caliber normally holding such positions with applicant." REA submits that if there is an element of [fol. 374] conjecture in this proceeding, it has been introduced by intervenors' bland assertion—without supporting facts—that 5 Greyhound directors will dominate the 25-man Board of Directors of REA. That argument would be ridiculous if directed against the directors of a corporation whose stock was owned by individuals. The argument becomes incredible when directed against the directors of REA, a corporation whose only stockholders are railroad corporation common carriers, each with a legal staff and board of directors of its own. REA directors are not only elected by such stockholders, they are elected by blocs of such stockholders with common corporate interests.

In the face of such facts, what avails intervenors' citations to "control" cases involving corporations whose stock is widely spread among individuals? Division 3 wisely dismissed such irrelevant arguments in concluding that the question of "control" of REA by Greyhound is premature at this time.

III.

Pursuant to Express Statutory Authority, Division 3 Correctly Issued the Division 3 Order Without Holding a Hearing; Denial of Petitions for a Hearing in this Section 20a Proceeding Has Not Injured Intervenors.

The Division 3 Order, in keeping with the customary procedure followed by the Interstate Commerce Commission [fol. 375] in Section 20a proceedings, was issued by Division 3 on the basis of the record made in this proceeding, but without holding a hearing. The action of Division 3 in denying the petitions for hearing filed by intervenors herein was a proper exercise of administrative discretion, based on express statutory authority, and, because of the continuing jurisdiction of the Commission over the questions raised, has not injured intervenors.

A. Division 3 correctly denied, pursuant to express statutory authority, all petitions for a hearing in this Section 20a proceeding.

There is no basis for challenge to the conduct of Division 3 in denying all requests for hearing in this proceeding. Such denial of hearing, had it been made without express statutory authority, would have been justifiable as a matter of administrative discretion. But such denial of hearing was not based on mere discretion; it was based upon the express statutory authority contained in Section 20a(6) of the Interstate Commerce Act, which provides, in pertinent part, that:

> "The commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority."

Intervenors cannot claim they have not been heard in this proceeding. Although Section 20a of the Interstate Commerce Act permits the Commission to issue orders [fol. 376] thereunder *ex parte*, the Commission in this pro-

petitions for reconsideration as a basis for any such collusion and no purpose for such collusion has been alleged. REA submits that such allegations constitute baseless speculation and indicate the weakness of the case of those alleging that the proposed stock issue would give Greyhound control of REA.

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> "The commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority."

Intervenors cannot claim they have not been heard in this proceeding. Although Section 20a of the Interstate Commerce Act permits the Commission to issue orders [fol. 376] thereunder *ex parte*, the Commission in this pro-

ceeding granted every one of the 12 petitions for intervention filed herein, and each of the intervenors has been permitted to file two (and in some cases, three) petitions with the Commission, all of which have been considered by the Commission. Having obliged the intervenors to this extent, the Commission is not required to go further and schedule a hearing in this proceeding. The intervenors have not put forward in their petitions any evidence for which a hearing should be held; they have merely recited conclusory allegations challenging the legality of the proposed stock issue. The Commission is under no obligation to schedule a hearing just to permit the intervenors again to recite such conclusions.

The point is made in several of the petitions for reconsideration that the Division 3 Order should be based upon evidence. That is a truism, but it does not follow that a hearing must be held in order to obtain such evidence. Division 3 had before it in this proceeding not only the annual and other periodic reports filed with it by REA and other carriers pursuant to law and the Commission's regulations but also the application and supporting documents filed under oath in this proceeding by REA. Such evidence has been held ample support for Section 20a orders in thousands of cases and there is no reason why [fol. 377] this case should be any different. Intervenors have not cited a single Section 20a case which even suggests that a hearing should be held in a case such as the instant one. The administrative process in obtaining Section 20a approval in order to enable an applicant to raise much needed funds by the issuance of its securities has been developed so as not to delay unduly the raising of such funds. There is no basis in the instant proceedings for changing this process—to do otherwise would defeat the purposes of Section 20a.*

* For example, the petition for reconsideration of Trans-Continental Bus System, Inc., *et al.*, states that: "It is imperative that a hearing be held . . . . The evidence of express revenue subject to diversion consists of voluminous and complicated exhibits which

B. The action of Division 3 in denying a hearing in this proceeding has not injured intervenors.

Several of the petitions for reconsideration allege that the denial of a hearing in this proceeding is "capricious" action by Division 3 and a denial of due process to the intervenors. The main thrust of the petitions for reconsideration is that the intervenors should have been given a hearing, not on the propriety of the proposed stock issue under Section 20a, but upon intervenors' allegations of [fol. 378] effect upon competition and control. The flaw in the argument of the intervenors that the denial of a hearing injured them is the continuing jurisdiction of the Commission over effects upon competition and control. The Division 3 Order, it must be stressed, did not approve control of REA by Greyhound under Section 5(2) of the Interstate Commerce Act, thereby immunizing the transaction from the antitrust laws. Quite to the contrary, no finding under Section 5 has been made by Division 3 in this proceeding and it remains open to the intervenors to raise the questions in a proper proceeding.

That the Commission may move at any time against REA and Greyhound for violating Section 5 of the Interstate Commerce Act is made quite clear not only by the express provisions of Section 5 but also Section 13. Section 5 states in part that:

> "(7) The Commission is authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (4) of this section."

Section 13(2) of the Interstate Commerce Act provides in part that

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will require extensive oral explanation for a clear understanding." If such hearings, with "voluminous" exhibits and "extensive" testimony, were permitted in Section 20a cases, the purposes of Section 20a would be completely frustrated.

". . . the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this [fol. 379] chapter, or relating to the enforcement of any of the provisions of this chapter."

Similarly, with respect to effect upon competition, Section 11(b) of the Clayton Act provides in part that:

"Whenever the Commission . . . shall have reason to believe that any person is violating or has violated any of the provisions of sections 2, 3, 7, and 8 of this Act, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint."

The Commission thus retains full jurisdiction at any time in the future to proceed against REA and Greyhound on the basis of unlawful effect upon competition or unlawful control of REA by Greyhound. That is why Division 3 stated in the Division 3 Order:

"*It further appearing,* That if in the future the acquisition of control or power to control, or other matter or transaction to which section 5 of the act applies, becomes imminent or apparent, the opportunity will be available for all interested persons to interpose their opposition; and it appearing that Greyhound has acknowledged the requirements of section 5 in this regard and has stated that it will file a timely application; and that nothing herein shall be construed as a determination of any matter under any section of the act, except sections 20a and 214, as expressly deter-

mined herein, or as creating a presumption as to the action which may be taken on any such application under section 5."

REA submits that the decision of Division 3 to postpone a hearing on control and effect upon competition at this time is a classic example of the proper exercise of discretion by an administrative agency with expertise in its field. [fol. 380] For Division 3 properly held that such questions are premature at this time, while knowing that such questions may always be examined by Division 3 in the light of further events. There are, for example, two such further events which would clarify for Division 3 the questions of control and effect on competition. First, it remains to be seen what will be the extent to which the railroad stockholders of REA exercise their right of first refusal in connection with the tender offer by Greyhound to purchase 1,000,000 shares of REA's common stock from REA stockholders. If the railroad stockholders of REA purchase all shares tendered to Greyhound (as they have said they would) so that Greyhound receives not a single additional share on the tender offer, what is left of the argument of intervenors of "collusion" between such stockholders and Greyhound? If, on the other hand, Greyhound should acquire 1,000,000 additional shares of REA stock, a control situation would clearly be presented by the acquisition of a majority of REA's stock. In that case a control proceeding would obviously be brought and Greyhound has in fact promised the Commission that it would file a timely application under Section 5 in such case.

Secondly, it is premature at this time to speculate as to the lawfulness of economies that *may* be effected as a result of an agreement *that has not as yet even been entered into.* [fol. 381] What form that agreement would take is a matter of conjecture at this time—the Memorandum of Understanding (submitted as Annex G to REA's Return to Information Request dated November 16, 1964) recites that it is merely a recitation of "possible" economies. The form

of such long-term agreement would be affected by the facts disclosed in an examination of possible economies and by the negotiations of the parties. If and when such agreement has been negotiated, the Commission will be in a position to determine whether the consolidation of services and facilities contemplated by such an agreement would produce a deleterious effect upon competition or effective "control" of one party by the other. What possible purpose would be served by holding a hearing at this time when *no one* could possibly testify with any degree of certainty as to what, if any, economies will be carried out?

WHEREFORE, the applicant REA prays that:

(a) all petitions for reconsideration of the Division 3 Order served March 16, 1965, in Finance Dockets Nos. 23324 and 23374 be denied, and

(b) that said Division 3 Order be permitted to become effective as soon as possible.

Dated this 30th day of April 1965.

William J. Taylor, Alan F. Doniger, Joel H. Gross, Henry P. Riordan, Counsel for Applicant Railway Express Agency, Incorporated.

[fol. 382] Certificate of Service (omitted in printing).

[fol. 383]

Service Date:
June 4, 1965

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 28th day of May, A. D. 1965.

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

CORRECTED ORDER—May 28, 1965

Upon consideration of the record in the above-numbered proceedings, of the petitions in Finance Docket No. 23324, filed by the interveners named in the appendix hereto, and the petition in Finance Docket No. 23374, filed by the intervener-complainant, for reconsideration of the order of Division 3 entered March 15, 1965, the effective date of which was stayed by notice to the parties dated April 16, 1965, to permit consideration of the said petitions for reconsideration, which order denied the interveners' petitions for hearing and other proceedings and dismissed the complaint; and the replies thereto filed by the applicant, Railway Express Agency, Incorporated, and Greyhound Corporation; and

It appearing, That the petitions set forth no material facts of any substance which were not considered by Division 3; that there has been presented no error of fact or

law with respect to the matters complained of by the petitioners; and that no showing has been made warranting reconsideration:

It is ordered, That said petitions be, and they are hereby, denied; and

It is further ordered, That the order of March 15, 1965, shall be effective 20 days from the date this order is served.

By the Commission, Division 3, acting as an Appellate Division.

Bertha F. Armes, Acting Secretary.

(Seal)

[fol. 384]

APPENDIX

Petitions for Reconsideration filed by Interveners as follows:

(a) Railroads of the western district

Southern Pacific Company
The Atchison, Topeka and Santa Fe Railway Company
The Denver and Rio Grande Western Railroad Company
St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas

(b) National Trailways Bus System, an association, and several motorbus companies

Transcontinental Bus System, Inc.
American Buslines, Inc.
Arkansas Motor Coaches, Ltd., Inc.
Bayshore Buslines, Inc.
Continental Bus System, Inc.
Continental Crescent Lines, Inc.
Continental Panhandle Lines, Inc.

Continental Southern Lines, Inc.
Continental Tennessee Lines, Inc.
Denver-Colorado Springs-Pueblo Motorway
Denver-Salt Lake-Pacific Stages, Inc.
Continental Pacific Lines, Inc.
Midwest Buslines, Inc.
Smoky Mountain Stages, Inc.
Tennessee Trailways, Inc.
Union Bus Lines, Inc.
Muscatine, Davenport and Clinton Bus Company.

(c) American Trucking Associations, Inc., Regular Common Carrier Conference, and several trucking companies

Denver Chicago Trucking Company, Inc.
Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation
Illinois-California Express, Inc.
Ringsby Truck Lines, Inc.
Watson-Wilson Transportation System, Inc.
Navajo Freight Lines, Inc.
[fol. 385] Pacific Intermountain Express Co.
Transcon Lines, in its own right and as operator of Indianapolis-Kansas City Motor Express Co., and Decatur Seaway Motor Express, Inc.
Western Gillette, Inc.
Interstate Motor Lines, Inc.
T.I.M.E. Freight, Inc.
Consolidated Copperstate Lines.

(d) Freight Forwarders Institute, representing freight forwarders.

[fol. 386] Secretary's Certificate to following transcript (omitted in printing).

[fol. 387]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

[Title omitted]

Finance Docket No. 23374

[Title omitted]

REPLY OF THE GREYHOUND CORPORATION TO PETITIONS FOR RECONSIDERATION—Filed May 5, 1965

[fol. 388] The petitions for reconsideration merely repeat contentions previously made by petitioners and considered by Division 3 in its order of March 15, 1965. There is nothing new. There is certainly nothing which would warrant a modification of the Division's order.

The petitioners advance varying versions as to why there should be a reconsideration, but each of the petitioners ends up at the same place—with a contention that Greyhound through a 20% stock interest would control REA. The evidence produced by REA shows conclusively [fol. 389] that this could not occur. Evidently this evidence has persuaded the Department of Justice since it has in effect accepted the Division's order by failing to petition for reconsideration.

In the expectation that applicant REA will answer the petitions fully, we shall simply present a concise statement of Greyhound's position on the principal points raised again by petitioners.

1. The Impossibility of Control by Greyhound with Only a 20% Stock Interest

As we have said, each and every petitioner bases its case for reconsideration on the proposition that Greyhound could control REA with only a 20% stock interest.

[File endorsement omitted]

Greyhound, of course, feels that control of REA by Greyhound would be beneficial to REA and Greyhound and particularly to the shipping public, and Greyhound, therefore, attempted to acquire control through negotiations with the railroad stockholders of REA for at least a 51% stock interest, but it was unsuccessful. Then Greyhound sought an equal stock interest with the railroads, but again without success. Finally, Greyhound agreed to what the railroads offered—a 20% stock interest.

In view of the history of the negotiations, it is obvious that the railroads did not intend to turn control of REA [fol. 390] over to Greyhound through the 20% stock interest. Certainly Greyhound is convinced that with only a 20% stock interest, with only five out of twenty-five directors, and with the railroads making common cause by groups as they did in the negotiations with Greyhound, Greyhound would not be in a position to control REA. This is so clear to Greyhound that under these circumstances it would not desire to be authorized by the Commission to control REA. It would not want the ostensible responsibility of control when it would not be in a position to exercise actual control.

2. The Impossibility of Joint Control by Greyhound and Certain Rail Carriers

Evidently recognizing the implausible character of their contention that Greyhound with only a 20% stock interest could control REA, certain of the petitioners advance a fanciful contention that Greyhound would have its way through the cooperation of certain "friendly" railroads. This, of course, does not include the self-styled friendly Southern Pacific, which is Greyhound's largest stockholder (nonvoting). The position of that carrier in this proceeding would indicate that affiliation has no bearing on the issue of REA control. But nonetheless Transcontinental Bus System, Inc., and the other bus company intervenors contend that *former affiliations* are significant. They say [fol. 391] that

> "Division 3 apparently has not considered some of the former affiliations of Greyhound." (Petition, p. 5)

and then go on to point out that at one time the New York Central, the Pennsylvania, and the Great Northern Railroads owned stock in some of the constituent companies of Greyhound. From this it is reasoned that these railroads would now cooperate with Greyhound to permit it to control REA.

It is, of course, ridiculous on its face to contend that these railroads "for old times' sake" would be willing to turn over control of REA to Greyhound, but it is all the more ridiculous when one considers that these same railroads would not go along with Greyhound's proposals to acquire, first, a majority stock interest, and, later, an equal stock interest with the railroads.

The bus petitioners go on to say that

> "It is apparent that the railroads of the eastern and southern districts, along with Greyhound, could place the control of REA in the hands of Greyhound." (Petition, p. 5)

They are joined in this contention by the American Trucking Association, et al., who state that

> ". . . since over 80 percent of the railroad stockholders voted to accept Greyhound's offer to buy control of Railway Express, it is reasonable to expect that a majority of such stockholders would support Greyhound's managerial aims, and that they would vote [fol. 392] in support of its policies. Thus even though Greyhound would be a minority stockholder, it is possible for it to control Railway Express by virtue of the acquiescence of sympathetic railroad owners of a substantial amount of Railway Express stock." (Petition, p. 8)

As we have already indicated, we have not yet found any of the railroad shareholders to be sympathetic to Greyhound's control of REA. Contrary to what the trucking petitioners state, over 80% of the railroad stockholders did not vote to accept Greyhound's offer to buy control of REA. They rejected that offer and they rejected the later offer of Greyhound to buy an equal 50% interest with the rail carriers. The rail carriers offered Greyhound a 20% interest and this is what Greyhound accepted. It is plain from the record in this case that there is no possibility of control of REA by Greyhound with the friendly cooperation of the rail carriers. This is the type of strained argument which the petitioners have had to rely upon in their attempt to convert a Section 20a securities case into a Section 5 control case. We trust that the Commission will not be misled.

3. The Subsequent Offer of Greyhound to Acquire an Additional One Million Shares of REA Stock

Certain of the petitioners purport to find some significance in the obligation of Greyhound subsequently to [fol. 393] offer to purchase an additional one million shares of REA stock. In due course, Greyhound does intend to make the offer for the one million shares as it is obligated to do under the agreement with REA. But what the petitioners completely ignore is that these shares are all subject to a right of first refusal in the present railroad shareholders and that it is quite certain that any shares which may be tendered to Greyhound will be acquired by existing railroad shareholders under this right. Greyhound has been told repeatedly by representatives of the Southern Pacific Company and others that it will not acquire a single share of REA stock pursuant to this offer. The Commission will note that neither the Southern Pacific Company nor any of the other railroad petitioners takes issue with this. They know (and they should in candor have informed the Commission) that it is their

plan to acquire any shares tendered to Greyhound pursuant to its offer.

In any event, this is now immaterial because if additional shares are made available to Greyhound in such amount as to raise the possibility of control, an appropriate application will be filed with the Commission. Greyhound's acceptance of the REA offer was "subject to all necessary authorizations from the Interstate Commerce [fol. 394] Commission", and it is Greyhound's intention to see that such authorizations are obtained. The Division properly recognized that it would be premature to deal with this matter at the present time, and the Division adequately protected the Commission's jurisdiction as well as the rights, if any, of the petitioners by providing in the order

> "*It further appearing,* That if in the future the acquisition of control or power to control, or other matter or transaction to which section 5 of the act applies, becomes imminent or apparent, the opportunity will be available for all interested persons to interpose their opposition; and it appearing that Greyhound has acknowledged the requirements of section 5 in this regard and has stated that it will file a timely application; and *that nothing herein shall be construed as a determination of any matter under any section of the act, except sections 20a and 214, as expressly determined herein, or as creating a presumption as to the action which may be taken on any such application under section 5;*" (Emphasis supplied.)

4. The Possibility of Coordination or Consolidation of Facilities or Services of REA and Greyhound

Some of the petitioners attempt to make much of the possible coordination or consolidation of facilities or services of REA and Greyhound. The petitioners have demonstrated considerable versatility in advancing all sorts of

situations, all fictitious and all wholly within the realm of speculation. The fact is, as the record shows, that no coordination or consolidation plan now exists. If in the future REA and Greyhound should develop any such plan which [fol. 395] would require authorization of this Commission under Section 5 or any other section of the Act, an appropriate application will be filed with the Commission. What Greyhound and REA may do in the future in the way of coordination or consolidation is now unknown even to them and could not possibly form the basis for any sort of an order under Section 5 of the Act.

5. The Lack of Necessity for a Hearing

Petitioners know that they are not entitled to a hearing as a matter of right, and they also know that it would be somewhat unusual for the Commission to hold a hearing on a security issue application under Sections 20a and 214 of the Act. Petitioners have, therefore, attempted to turn this proceeding into a Section 5 case and without any real basis for doing so.

The position of the petitioners amounts to this—since they have raised the issue of control in the Section 20a proceeding, the Commission *must* institute an investigation under Section 5, the Commission *must* hold a hearing, *and the Commission cannot even comment upon the facts which which indicate that no such investigation and hearing would be proper*. Certain of the petitioners even take the Commission to task for commenting on the facts of record which [fol. 396] demonstrate that an investigation of control under Section 5 of the Act would not be appropriate. (Petition of Freight Forwarders Institute, pp. 4-7; Petition for Reconsideration on Behalf of The Atchison, Topeka and Santa Fe Railway Company, p. 7; Petition for Reconsideration of Intervener and Complainant Southern Pacific Company, p. 5.) This is an extreme position and one which the Commission could not possibly accept. Simply because some of the parties make unfounded allegations of control and support this with farfetched arguments such as those

of the bus carriers and trucking carriers hereinbefore mentioned, the Commission does not have to close its eyes to the fact that this is simply a security issue case and does not involve any possibility of control at this time.

Greyhound has never objected to the Commission making such investigation as it might deem necessary in this proceeding. REA filed a detailed application and at the request of the Commission supplied a considerable volume of supplementary factual material. The Commission had before it all of the essential facts when it made its order of March 15, 1965. Any further investigation would simply waste the time of the Commission and the parties and could lead to no other conclusion than that set forth in the order [fol. 397] of Division 3.

The petitions for reconsideration should forthwith be denied.

Respectfully submitted,

Robert J. Bernard, Gerald H. Trautman, Attorneys for The Greyhound Corporation.

[fol. 398] Certificate of Service (omitted in printing).

[fol. 399]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. FD-23324

[Title omitted]

PETITION SEEKING A FINDING THAT THE PROCEEDING INVOLVES AN ISSUE OF GENERAL TRANSPORTATION IMPORTANCE—Filed June 7, 1965

Now comes Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Con-

tinental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Inc., Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Buslines, Inc., and Muscatine, Davenport and Clinton Bus Company, Petitioners herein, requesting the Commission to find that the instant proceeding is one involving an issue of general transportation importance, and in support thereof would show the Commission as follows:

I.

Docket No. FD-23324 is the application of R.E.A. for authority, under Sections 20a and 214 of the Act, to issue 500,000 shares of its authorized but unissued shares of common stock to the Greyhound Corporation (Greyhound) for a total price of Ten Million Dollars ($10,000,000).

Petitioners, in opposition to said application, timely filed petitions seeking (1) leave to intervene, (2) an Order requiring R.E.A. and Greyhound to file an application under Section 5 of the Act, (3) consolidation of the securities [fol. 400] and Section 5 application for hearing on a common record, and (4) oral hearings in said proceedings. The Commission, by Order served December 8, 1964, permitted Petitioners to intervene in the instant proceeding.

By Order served March 16, 1965, Division Three denied the numerous petitions for hearing and other proceedings, and authorized the proposed stock issuance. Petitioners timely filed their Petition for Reconsideration of the Order of Division Three, and, by Order served May 28, 1965, Division Three denied all Petitions for Reconsideration.

II.

The application states that the proposed transaction will provide a working basis for R.E.A. and Greyhound entering into an agreement with respect to the consolidation of

certain operating functions and facilities. This means a consolidation of the operating functions and facilities of the largest motorbus company in the world, and the largest express company in the world. The proposed consolidation presents issues and questions never before considered by this Commission. The consolidation of a bus company and express company has never been attempted under the Act, and whether the issuance of stock by R.E.A. to Greyhound is in the public interest and consistent with the proper performance by R.E.A. of service to the public is a matter that cannot properly be determined by the self-serving declarations of R.E.A. and Greyhound. Since the Commission has steadfastly refused to order a hearing in this matter to produce facts upon which findings can be properly made, the findings in these proceedings are based solely upon those self-serving declarations.

Petitioners submit that the issuance of stock by R.E.A. to Greyhound is not in the public interest and is neither necessary nor appropriate for, or consistent with, the proper performance by R.E.A. of service to the public as an express company or common carrier. As stated by the Commission in *Railway Express Agency, Inc.,—Extension* [fol. 401] *—Nashua, N.H.*, 91 M.C.C. 311, the Commission must, in accomplishing the purposes forming the National Transportation Policy, provide for fair and impartial regulation of all modes of transportation subject to the provisions of the Act, *and recognize and preserve the inherent advantages of the several modes of transportation.* The proposed consolidation of R.E.A. and Greyhound operations and facilities, if allowed, would destroy the customary distinction between and inherent advantages of the several modes of transportation.

Many of Petitioners' passenger operations are dependent upon express revenue in order to maintain continuous and adequate service to the public. The combined efforts of R.E.A. and Greyhound will place Petitioners in the position of being unable to compete with them for express revenue and would only result in a restraint of

competition, which result is clearly incompatible with the public interest.

Wherefore, Petitioners pray that the Commission find that the proceeding is one involving an issue of general transportation importance.

Respectfully submitted,

Transcontinental Bus System, Inc., et al., Warren A. Goff, D. Paul Stafford, 315 Continental Avenue, Dallas, Texas 75207, Attorneys for Petitioners.

Certificate of Service (omitted in printing).

[fol. 402]

Service Date
June 17, 1965

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

In the Matter of Postponement of Effective Date of Order

Present: Charles A. Webb, Chairman, to whom the above-entitled matter has been assigned for action thereon.

ORDER—June 16, 1965

It appearing, That the order of the Commission, Division 3, dated March 15, 1965, as modified by the corrected order

of the Commission, Division 3, Acting as an Appellate Division, dated May 28, 1965, in the above-entitled proceedings, will become effective 20 days from the date of service on June 4, 1965, of the corrected order of May 28, 1965; and

It further appearing, That on June 16, 1965, a court action was filed in the United States District Court for the District of Colorado entitled *The Denver and Rio Grande Western Railroad Company, et al.* v. *United States and Interstate Commerce Commission,* seeking to have the court annul and set aside the orders referred to above, and requesting that the court enter a temporary restraining order pending final disposition of said action; and good cause appearing therefor:

It is ordered, That the effective date of the order entered by the Commission, Division 3, on March 15, 1965, as amended by the corrected order entered by the Commission, Division 3, Acting as an Appellate Division, on May 28, 1965, be, and it is hereby, postponed until further order of the Commission.

Dated at Washington, D. C., this 16th day of June, A.D. 1965.

By the Commission, Chairman Webb.

Bertha F. Armes, Acting Secretary.

(Seal)

[fol. 403]

Service Date:
August 13, 1965

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of August, A. D. 1965.

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

ORDER—August 11, 1965

Upon consideration of the record in the above-entitled proceeding, including: (a) the order of March 15, 1965, by Division 3, granting the application as made; (b) petitions filed by interveners for reconsideration of the said order; (c) replies thereto by applicant and Greyhound Corporation; (d) the order of May 28, 1965, by Division 3, acting as an Appellate Division, denying the said petitions; and (e) the petition dated June 4, 1965, by Transcontinental Bus System, Inc., et al., interveners, seeking a finding that the proceeding involves an issue of general transportation importance; and

It appearing, That on June 16, 1965, a court action was filed in the United States District Court for the District of Colorado entitled *The Denver and Rio Grande Western Railroad Company, et al.* v. *United States and Interstate Commerce Commission,* seeking to have the court annul and set aside the orders referred to above:

It is ordered, That the proceeding be, and it is hereby, recalled from Division 3.

It is further ordered, That the order of Appellate Division 3, dated May 28, 1965, be, and it is hereby, vacated and

set aside, and that the proceeding be, and it is hereby, reopened for reconsideration on the present record.

It is further ordered, Upon reconsideration, that the action taken by Division 3 in its order dated March 15, 1965, be, and it is hereby, affirmed.

It is further ordered, That the petition requesting a finding that an issue of general transportation importance is involved be, and it is hereby, dismissed as moot; and

It is further ordered, That the order of March 15, 1965, as affirmed hereby, shall be effective thirty days from the date of service of this order.

By the Commission.

H. Neil Garson, Secretary.

(Seal)

[fol. 404]

Service Date
August 13, 1965

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of August, A. D. 1965.

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

CORRECTED ORDER—August 11, 1965

Upon consideration of the record in the above-entitled proceedings, including (a) the order of March 15, 1965, by

Division 3, granting the application as made; (b) petitions filed by interveners for reconsideration of the said order; (c) replies thereto by applicant and Greyhound Corporation; (d) the order of May 28, 1965, by Division 3, acting as an Appellate Division, denying the said petitions; and (e) the petition dated June 4, 1965, by Transcontinental Bus System, Inc., et al., interveners, seeking a finding that the proceeding involves an issue of general transportation importance; and

It appearing, That on June 16, 1965, a court action was filed in the United States District Court for the District of Colorado entitled *The Denver and Rio Grande Western Railroad Company, et al.* v. *United States and Interstate Commerce Commission,* seeking to have the court annul and set aside the orders referred to above:

It is ordered, That the proceedings be, and they are hereby, recalled from Division 3.

It is further ordered, That the order of Appellate Division 3, dated May 28, 1965, be, and it is hereby, vacated and set aside, and that the proceedings be, and they are hereby, reopened for reconsideration on the present record.

It is further ordered, Upon reconsideration, that the action taken by Division 3 in its order dated March 15, 1965, be, and it is hereby, affirmed.

It is further ordered, That the petition requesting a finding that an issue of general transportation importance is involved be, and it is hereby, dismissed as moot; and

It is further ordered, That the order of March 15, 1965, as affirmed hereby, shall be effective thirty days from the date of service of this order.

H. Neil Garson, Secretary.

(Seal)

[fol. 405]

Service Date
August 18, 1965

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED, STOCK

Finance Docket No. 23374

SOUTHERN PACIFIC CO.

v.

GREYHOUND CORP. and RAILWAY EXPRESS AGENCY, INC.

In the Matter of Postponement of Effective Date of Order

Present: Charles A. Webb, Chairman, to whom the above-entitled matter has been assigned for action thereon.

ORDER—August 17, 1965

It appearing, That the order of the Commission, Division 3, dated March 15, 1965, as modified by the corrected order of the Commission, dated August 11, 1965, in the above-entitled proceedings, will become effective 30 days from August 13, 1965, the date of service of the corrected order of August 11, 1965; and

It further appearing, That a court action has been filed in the United States District Court for the District of Colorado entitled *The Denver and Rio Grande Western Railroad Company, et al.* v. *United States and Interstate Commerce Commission,* seeking to have the court annul and set aside the order of the Commission, Division 3, dated March 15, 1965, as modified, and requesting that the court

enter a temporary restraining order pending final disposition of said action; and good cause appearing therefor:

It is ordered, That the effective date of the order entered by the Commission, Division 3, on March 15, 1965, as modified by the corrected order entered by the Commission on August 11, 1965, be, and it is hereby, postponed until further order of the Commission.

Dated at Washington, D. C., this 17th day of August, A.D. 1965.

By the Commission, Chairman Webb.

H. Neil Garson, Secretary.

(Seal)

[fol. 406] CERTIFICATE OF CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 407]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

Three-Judge Case

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; SOUTHERN PACIFIC COMPANY; Plaintiffs,

against

UNITED STATES OF AMERICA; and INTERSTATE COMMERCE COMMISSION; Defendants.

COMPLAINT—Filed June 16, 1965

[fol. 408] To the Honorable Judges for the District Court of the United States for the District of Colorado:

Come Now the plaintiffs above named, by their attorneys, and for their action against defendants respectfully allege and show:

1.

This is a proceeding to enjoin, set aside, annul, and suspend, Orders entered on March 15, 1965, and May 28, 1965, by the Interstate Commerce Commission (hereinafter referred to as the "Commission") in administrative proceedings identified as Finance Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* and Finance Docket

[File endorsement omitted]

2.

Plaintiffs are corporations, as described in Exhibit A hereto attached and made a part hereof, and are common carriers of freight by railroad and are subject to the Interstate Commerce Act (49 U.S.C., § 1, et seq.), in respect of their interstate operations. Plaintiffs are common stockholders of Railway Express Agency, Incorporated (hereinafter referred to as "REA"), a common carrier by express on railroads and a common carrier by motor vehicle, engaged in the transportation of property between points in all states of the United States and, as such, REA is also subject to the provisions of the Interstate Commerce Act. REA is authorized to issue 2,576,000 shares of common stock, of which 1,999,188 shares have been duly issued and are outstanding. Plaintiffs are owners of shares of common stock of REA as follows:

[fol. 409] The Denver and Rio Grande Western Railroad Company ..... 12,456 Shares

The Atchison, Topeka and Santa Fe Railway Company ..... 95,496 Shares

St. Louis Southwestern Railway Company ..... 4,152 Shares

St. Louis Southwestern Railway Company of Texas ..... 4,152 Shares

Southern Pacific Company ..... 95,496 Shares

3.

The United States of America is made defendant in this proceeding pursuant to Title 28, United States Code, Section 2322. Defendant Interstate Commerce Commission is an agency of the United States, created pursuant to the Interstate Commerce Act (49 U.S.C. § 1, et seq.).

4.

This is a civil action, and jurisdiction of this Court is invoked under Sections 1336, 2284, and 2321 through 2325, inclusive, of Title 28, United States Code.

5.

Venue lies in this judicial district under Section 1398 of Title 28, United States Code, because the principal office of The Denver and Rio Grande Western Railroad Company is in this district.

6.

This controversy arises out of two proceedings before the Commission. The first proceeding, in Finance Docket No. 23324, was instituted by application filed on or about October 7, 1964, by REA under Sections 20a and 214 of the Interstate Commerce Act, for authority to issue 500,000 shares, constituting about twenty per cent, of REA's [fol. 410] authorized common stock to The Greyhound Corporation (hereinafter referred to as "Greyhound") at the price of $20 per share, upon the following terms and conditions:

(a) The REA By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the REA Board of Directors.

(b) The REA Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,637,054 of outstanding 5% notes, issued originally to REA's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The REA Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between REA and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies,

improve service and increase public receptivity and patronage.

(d) The REA Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some REA stock to airlines and/or the general public if and when conditions appear favorable to the best interests of REA as a company.

(e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of REA from present shareholders at a price of $20 per share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of REA.

(f) The offer of REA shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of REA may be accepted immediately, subject to all necesary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

The second proceeding, in Finance Docket No. 23374, was instituted by complaint filed on or about October 30, 1964, by Southern Pacific Company, naming Greyhound and REA as defendants. The complaint sought to have the proposed transaction for sale by REA of 500,000 shares of its common stock declared unlawful under Section 5(4) of the Interstate Commerce Act, unless an application were [fol. 411] presented to and authority secured from the Commission under Section 5(2)(b) of the Act. The com-

plaint alleged that no such application had been filed, and that the transaction was unlawful, and asked the Commission, under Section 5(7) of the Act, to direct the defendants to cease and desist from consummating the proposed transaction.

7.

Accompanying this complaint is a copy of the material records in the said proceedings before the Commission, duly certified to by the Secretary of the Commission, according to law [Title 49, U.S.C., § 16(13)], which record are made a part of this complaint by reference, and are hereinafter referred to collectively as the "record" and respectively by the names of the documents comprising such record. All of the certified copies of such records in Interstate Commerce Commission Finance Dockets Nos. 23324 and 23374 are tendered as prima facie evidence of what they purport to be for the purpose of this judicial proceeding.

8.

Greyhound is a corporation having its principal place of business at Chicago, Illinois, and is a common carrier by express and motor vehicle, or controls common carriers by express or motor vehicle, and is engaged in the transportation of property and passengers between points in all states of the United States except Alaska and Hawaii and, as such, Greyhound is subject to the provisions of the Interstate Commerce Act.

9.

REA and Greyhound are competitors for the transportation of property between points in all states of the United States except Alaska and Hawaii.

[fol. 412] 10.

In the proceeding in Finance Docket No. 23324, petitions for leave to intervene and protests in opposition requesting

a formal hearing were filed by The Denver and Rio Grande Western Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railroad Company, St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, and Southern Pacific Company, Freight Forwarders Institute, representing freight forwarders, American Trucking Associations, Inc., Regular Common Carrier Conference, and eleven trucking companies, National Trailways Bus System, an association, and seventeen motor bus companies. The only party petitioning for leave to intervene in support of the application was Greyhound. The United States Department of Justice filed a petition for leave to intervene, requesting oral hearings, a prehearing conference, and consolidation with a proceeding to determine the lawfulness of the proposed transaction under Section 7 of the Clayton Act. National Trailways Bus System and several motor bus companies, in their petitions requested an order requiring Greyhound to file an application under Section 5 of the Interstate Commerce Act, and requesting consolidation and hearing of such application on a common record with the application for authority to issue said stock. Finance Board No. 2 of the Commission certified the application to Division 3 for determination.

11.

In the proceeding in Finance Docket No. 23374, answers and motions to dismiss the complaint were filed by REA and Greyhound, and reply to the motion to dismiss was filed by Southern Pacific Company.

[fol. 413] 12.

The Commission held no hearings whatever in either proceeding, and by Order entered March 15, 1965, by Division 3, in both of said cases, denied the petitions of interveners for a hearing, dismissed the complaint in Finance

Docket No. 23374, and authorized REA to issue 500,000 shares of its common stock in accordance with the application in Finance Docket No. 23324.

13.

Petition was filed on April 1, 1965, by American Trucking Associations, Inc., and Regular Common Carrier Conference, and on or about April 8, 1965, by Freight Forwarders Institute, to stay the effective date of Division 3's Order pending consideration of petitions for reconsideration. Within the time permitted by law, petitions for reconsideration of the Order of March 15, 1965, were filed by The Denver and Rio Grande Western Railroad Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Freight Forwarders Institute, American Trucking Associations, Inc., and Transcontinental Bus System, Inc., et al. On April 16, 1965, the Commission issued a notice stating that the Commission's Order of March 15, 1965, was stayed pending disposition of the matter. Finally, by Order entered May 28, 1965, the Commission, by Division 3 acting as an appellate division, denied the petitions for reconsideration of said Order of March 15, 1965, providing that it should become effective twenty days from May 28, 1965. Subsequently, a Corrected Order, entered May 28, 1965, was issued, directing that the Order of March 15, 1965, become effective twenty days from June 4, 1965.

[fol. 414]

14.

The Commission's Order of March 15, 1965, will become effective on June 24, 1965, unless restrained by Order of this Court, or unless that date is extended by Order of the Commission.

15.

Plaintiffs have exhausted their administrative remedies, and this action is brought to obtain judicial review of, and judicial relief from, the Commission's Orders of March 15, 1965, and May 28, 1965, as corrected.

16.

The Commission, in making and issuing said Orders of March 15, 1965, and May 28, 1965, exceeded its power and authority delegated to it by the Interstate Commerce Act, and erred as a matter of law, and acted unlawfully, arbitrarily, capriciously, and in abuse of its discretion in the following particulars, among others:

(a) In that the Commission failed and refused, despite its duty under Section 12(1) of the Interstate Commerce Act, 49 U.S.C., § 12(1), to execute and enforce all the provisions of Part I of the Interstate Commerce Act, to exercise its jurisdiction under Section 5(7), invoked by complaint in Finance Docket No. 23374, to investigate and determine, after notice and hearing, whether the transaction set forth in paragraph 6 hereof would result in unlawful control of REA by Greyhound in violation of Section 5(4) of that Act.

(b) In that the Commission failed and refused, in violation of due process of law, and despite its duty under Sections 20a(2) and 214 of the Interstate Com- [fol. 415] merce Act, 49 U.S.C., §§ 20a(2) and 314, to investigate the purposes and uses of the proposed issue and the proceeds thereof, to conduct hearings as requested by plaintiffs and other parties in Finance Docket No. 23324 desiring to present evidence in opposition to the application therein, in order to determine whether the transaction set forth in paragraph 6 hereof was in violation of Section 5(4) of the Interstate Commerce Act.

(c) In that the Commission's findings set forth in its Order of March 15, 1965, in support of its approval of the application of REA in Finance Docket No. 23324 and of its dismissal of the complaint in Finance Docket No. 23374 are deficient in that they were made upon mere allegations in the pleadings without the benefit of hearings, and without the benefit of evidence in opposition, and consequently were not supported by substantial evidence on the record considered as a whole, and the basis for such findings failed to satisfy the requirements of Sections 20a and 214 of the Interstate Commerce Act, 49 U.S.C., §§ 20a and 314.

Such findings fail to satisfy the statutory requirements of Section 20a(2) for the reason that a transaction violating Section 5(4) of the Act, as alleged by opposing parties, could not be deemed compatible with the public interest or appropriate for or consistent with the proper performance by a carrier of service to the public.

17.

If the Orders of March 15, 1965, and May 28, 1965, are enforced, said Orders will cause plaintiffs to suffer immediate and irreparable damage, in that:

[fol. 416] (a) Once the transaction is approved and consummated, it would be extremely difficult, if not impossible, to secure the divestment of control by Greyhound and to restore the status quo at a later date and, in any event, plaintiffs would be compelled to incur substantial expense in lengthy and complicated legal proceedings to that end.

(b) On and after the effective date of such Orders, i.e., June 24, 1965, REA and Greyhound would be in a position to complete the proposed transaction set forth in paragraph 6 hereof, consummate the sale of its stock to Greyhound, and be immediately represented on the REA Board of Directors by five directors, giv-

ing Greyhound, to its competitive advantage and the detriment of REA, and thus of plaintiffs as stockholders of REA, the opportunity of acquiring confidential information as to the traffic, finances, and operations of REA.

(c) Plaintiffs would be without any adequate remedy at law to prevent the consummation of what they believe to be an illegal transaction detrimental to the interests of REA and, consequently, injurious to plaintiffs' interests as stockholders of REA, in that plaintiffs would have no one to look to for legal compensation for such injury.

18.

No injury will be sustained by defendants or by the public through the issuance of a temporary restraining order or an interlocutory injunction pending final disposition of this proceeding.

Wherefore, plaintiffs pray:

1. That the Court issue a temporary restraining order [fol. 417] pursuant to Sections 2284(3) and 2324 of Title 28, United States Code, restraining the operation, enforcement or execution of the Orders of the Commission dated March 15, 1965, and May 28, 1965.

2. That process may issue against defendants, the United States of America and the Interstate Commerce Commission.

3. That a Court constituted as required by Title 28 of the United States Code, Sections 2284 and 2321-2325, consisting of three judges, be convened.

4. That upon the expiration of such temporary restraining order the Court grant an interlocutory injunction enjoining the Commission from making its Orders effective pending the final hearing and determination of this action.

5. That the Court permanently set aside, annul and suspend the Commission's Orders and grant a permanent injunction against their operation, enforcement and execution.

6. That plaintiffs recover their proper costs.

7. That plaintiffs have such other and further relief as may be appropriate.

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., 550 Fifteenth Street, Denver, Colorado 80202; T. A. White, 1531 Stout Street, Denver, Colorado 80217; Richard K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois 60604; Harry B. La Tourette, C. W. Fiddes, 1517 West Front Street, Tyler, Texas 75702; Jeremiah C. Waterman, 205 Transportation Building, Washington, D. C. 20006, by Robert S. Gast, Jr., Attorneys for Plaintiffs.

[fol. 418] *Duly sworn to by Charles W. Burkett, jurat omitted in printing.*

[fol. 419]

EXHIBIT A TO COMPLAINT

Plaintiff The Denver and Rio Grande Western Railroad Company is a corporation organized under the laws of the State of Delaware, having its principal office at Denver, Colorado, and operating lines of railroad in three states.

Plaintiff The Atchison, Topeka and Santa Fe Railway Company is a corporation organized under the laws of the State of Kansas, having its principal office at Topeka, Kansas, and operating lines of railroad in twelve states, including Colorado.

Plaintiff St. Louis Southwestern Railway Company is a corporation organized under the laws of the State of Mis-

souri, having its principal office at Tyler, Texas, and operating lines of railroad in six states.

Plaintiff St. Louis Southwestern Railway Company of Texas is a corporation organized under the laws of the State of Texas, having its principal office at Tyler, Texas, and owning lines of railroad in Texas which are operated by St. Louis Southwestern Railway Company, as lessee.

Plaintiff Southern Pacific Company is a Corporation organized under the laws of the State of Delaware, having its principal office at San Francisco, California, and operating lines of railroad in eight states.

[fol. 420]

AFFIDAVIT OF ROBERT J. MCLEAN—Filed June 16, 1965

State of California,
City and County of San Francisco, ss.:

ROBERT J. MCLEAN, being duly sworn, deposes and says:

My name is Robert J. McLean, I am Assistant Vice President and Assistant Treasurer of Southern Pacific Company, with offices at 65 Market Street, San Franciso, California. I have held my present position since January 1, 1962. Prior thereto, and for the period 1948 to 1962, I was also employed by Southern Pacific Company in its Law Department in various positions, as Attorney, Assistant General Attorney, and General Attorney.

This affidavit is submitted in behalf of the plaintiffs. The plaintiffs are all owners of stock of the Railway Express Agency, Incorporated (hereinafter called REA). The total outstanding stock of REA consists of 1,999,188 shares of common stock, of which plaintiffs own 211,752 shares, or 10.59 per cent. The common stock of REA owned by plaintiffs consists of the following:

The Atchison, Topeka and Santa Fe Railway Company	95,496 shares

[File endorsement omitted]

The Denver and Rio Grande Western Railroad Company	12,456 shares
St. Louis Southwestern Railway Company	4,152 shares
St. Louis Southwestern Railway Company of Texas	4,152 shares
Southern Pacific Company	95,496 shares

The purpose of my affidavit is to establish the irreparable and serious damage REA and plaintiffs as stockholders of REA would suffer if the transaction set forth in paragraph 6 of the complaint herein is permitted to go into effect. REA and The Greyhound Corporation (hereinafter called [fol. 421] Greyhound) are in competition for the transportation of freight between points in the United States. Under this proposed transaction, REA would issue common stock amounting to 20 per cent of its authorized shares to Greyhound, and Greyhound would be authorized to nominate five of the twenty-five directors on the REA Board. In addition, one of the terms of the transaction requires the REA Board to adopt a resolution, "declaring the intention to consider seriously and work toward a long-term agreement between REA and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage". The conditions of the proposed transaction thus indicate a definite plan or design to effect a consolidation of REA and Greyhound operations and facilities. The stock ownership of REA is presently held by plaintiffs and other railroads over whose lines it operates an express service for the transportation of property, particularly smaller packages. Greyhound is likewise engaged in the transportation of smaller packages on its motor buses.

The acquisition by Greyhound of an interest in REA, giving Greyhound control or the power to control REA

which may well be exercised in collaboration with other REA stockholders, would have a most disastrous impact on the nationwide express business conducted by REA. Such business is directly competitive with Greyhound small package transportation service and Greyhound would be in a position to use such control to effect broad changes in the operation of the express business with resulting diversion of traffic to the advantage of Greyhound and the detriment of REA and some or all of its railroad stockholders.

The effective date of the Commission's order which is [fol. 422] sought to be enjoined is June 24, 1965, and on that date, unless a restraining order is granted, Greyhound will be in a position to consummate the proposed transaction by acquiring a 20 per cent stock interest and nominating five members of the twenty-five-member Board of Directors of REA. Once the transaction becomes a *fait accompli* it would be next to impossible to effect a divestiture of the control without great expense and lengthy legal proceedings, to the irreparable damage of REA and, consequently, its stockholders.

A further source of irreparable injury, in the event the proposed transaction is not restrained, would lie in the ability of Greyhound with five directors on the Board of REA to obtain confidential information and data as to the operation, finances, and traffic of REA. Such information and data could be readily used by Greyhound to its competitive advantage in effecting diversion of traffic from REA, also to the irreparable damage to REA and its stockholders.

Robert J. McLean

Subscribed and sworn to before me this 11th day of June, 1965.

H. G. Bunn, Jr., Notary Public, in and for the City and County of San Francisco, State of California.

My commission expires June 25, 1967.

[fol. 423]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

COMPLAINT OF INTERVENING PLAINTIFFS TO SET ASIDE AND ANNUL ORDERS OF THE INTERSTATE COMMERCE COMMISSION—Filed July 21, 1965

Come now American Trucking Associations, Inc., and Regular Common Carrier Conference, intervening plaintiffs, and for their cause of action state:

Jurisdiction

1. This is an action to suspend, enjoin, annul, and set aside two orders of the defendant Interstate Commerce Commission, and arises under the provisions of Sections 17 and 205(g) and (h) of the Interstate Commerce Act, 49 U.S.C. §§ 17, 305(g) and (h), Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009, and Sections 1336, 1398, 2284, and 2321 through 2325 of the Judicial Code, 28 U.S.C. §§ 1336, 1398, 2284, and 2321 through 2325. The United States of America is named as a defendant pursuant to Section 2322 of the Judicial Code, 28 U.S.C. § 2322.

Plaintiffs

2. The American Trucking Associations, Inc., is the national organization of the trucking industry, representing all types of motor carriers of property, on whose behalf it customarily appears in proceedings before the Interstate Commerce Commission and the courts. It is duly organized and existing as a non-profit corporation under the

[File endorsement omitted]

laws of the District of Columbia, and maintains offices at 1616 P Street, N. W., Washington, D. C. 20036.

3. The Regular Common Carrier Conference, an affiliate of the American Trucking Associations, Inc., is a nonprofit corporation organized under the laws of the District of Columbia, and maintains its office at 1616 P Street, [fol. 424] N. W., Washington, D. C. 20036. Its membership is comprised of approximately 1600 common carriers by motor vehicle performing transportation in interstate and foreign commerce over regular routes and under regulation by the Interstate Commerce Commission.

Statement

4. By application filed October 7, 1964, Docket No. 23324, Railway Express Agency, Incorporated (Railway Express), seeks authority under Sections 20a and 214 of the Interstate Commerce Act, 49 U.S.C. §§ 20a and 314, to issue 500,000 shares of its authorized but unissued common stock, par value $1 per share. The application was filed pursuant to an agreement between Railway Express and The Greyhound Corporation (Greyhound) whereby the latter has agreed to buy the described 500,000 shares of stock from Railway Express at a price of $20 per share. Among other things, that agreement required, as a condition precedent to Railway Express's agreement to sell the 500,000 shares of its stock, that Greyhound offer to buy for $20 per share an additional 1,000,000 shares of the outstanding common stock from its railroad stockholders. It also provided for the adoption of a resolution by Railway Express's board of directors, which resolution was adopted on September 1, 1964, declaring the intention of Railway Express to consider seriously and work toward a long-term agreement between Railway Express and Greyhound to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service, and increase public receptivity

and patronage. Furthermore, the agreement provided, and Railway Express's board of directors so resolved on September 1, 1964, that Greyhound shall be permitted to name 20 percent of Railway Express's board of directors if it succeeds in buying the 500,000 shares of stock sought to be issued.

5. Railway Express's charter authorizes it to issue 2,576,000 shares of common stock, of which 1,999,188 shares are outstanding and owned by 60 railroads. The proposed issuance of 500,000 shares of common stock will bring Railway Express's total outstanding shares to 2,499,188. Should Greyhound acquire the involved 500,000 shares, a 20 percent interest in Railway Express, and succeed in buying the 1,000,000 additional shares from the railroads, it would then own 60 percent of Railway Express's stock.

[fol. 425] 6. Intervening plaintiffs, 12 motor common carriers, National Trailways, 17 motorbus companies, Freight Forwarders Institute, and 5 railroad stockholders of Railway Express all filed petitions with the Commission for leave to intervene in opposition to the application. Besides protesting the application, intervening plaintiffs, as did several other opposing intervenors, asked that a hearing be held by the Commission to determine whether Railway Express's proposed stock issuance meets the statutory requirements of Sections 20a and 214, particularly whether the sale of the stock to Greyhound would be compatible with the public interest and is necessary or appropriate for or consistent with the proper performance by Railway Express of service to the public, and to explore the question of control of Railway Express by Greyhound, implicit in the application.

7. A petition for leave to intervene was also filed by the Department of Justice, requesting the Commission to institute a proceeding to determine the lawfulness of the proposed stock transaction under Section 7 of the Clayton

Antitrust Act, and to consolidate Railway Express's application to issue the 500,000 shares for consideration with such a proceeding.

8. Southern Pacific Company, an opposing railroad stockholder of Railway Express, filed a complaint with the Interstate Commerce Commission, Docket No. 23374, alleging that the agreement between Railway Express and Greyhound and the proposed stock issuance contemplates the acquisition of control, or the power to exercise control or management of Railway Express by Greyhound. It asked the Commission to invoke the provisions of Section 5(7) of the Interstate Commerce Act, 49 U.S.C. § 5(7), and, after hearing and investigation, to require Railway Express to cease and desist from consummating the transaction.

9. Railway Express replied to the protests and petitions for leave to intervene in opposition to its application, urging primarily that its application be approved without further proceedings. In addition, Railway Express and Greyhound filed motions to dismiss and answers to the complaint of the Southern Pacific Company. Southern Pacific Company, in turn, replied to the motions to dismiss. The Commission granted all the petitions for leave to intervene.

10. By order served March 16, 1965, the Commission, Division 3, found that the issuance of the 500,000 shares of common stock by Railway Express was for a lawful [fol. 426] purpose under Sections 20a and 214, and authorized Railway Express to issue the shares of stock, providing an effective date 35 days from the date of service of the order. It summarily rejected intervenors' arguments in opposition to the application and found further that a hearing was not appropriate "at this time" to investigate whether or not the transaction might violate the provisions of Section 5 of the Interstate Commerce Act or Section 7

of the Clayton Antitrust Act. It dismissed the complaint filed by the Southern Pacific Company. A copy of the Commission's order is attached to the plaintiffs' complaint as part of the record before the Commission.

11. Intervening plaintiffs and other intervenors in opposition to the application, pursuant to the Commission's General Rules of Practice, filed a petition with the Commission seeking reconsideration of its order of March 16, 1965. We asked that the Commission vacate its order granting the application, and that it order the proceeding to be set down for hearing in order to determine whether the proposed issuance is in fact in conformity with the requirements of Sections 20a, 214, and 5 of the Interstate Commerce Act, Congress's national transportation policy, and Section 7 of the Clayton Antitrust Act. By order served June 4, 1965, Division 3, acting as an Appellate Division, denied these petitions. A copy of this order is attached to plaintiffs' complaint as part of the record.

12. By Section 17 of the Interstate Commerce Act, 49 U.S.C. §17, the order of Division 3 served June 4, 1965, is administratively final, and intervening plaintiffs have exhusted their administrative remedies.

Allegations Of Error

13. By its orders served March 16, 1965, and June 4, 1965, in Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* the defendant Interstate Commerce Commission acted unlawfully, arbitrarily, and capriciously, and abused its discretion in the following particulars:

(a) In refusing to exercise its authority under Section 5(7) to determine, after notice and hearing, whether or not the proposed transaction would result in Greyhound unlawfully acquiring control, or the power to control Railway Express, in violation of Section 5(4), as alleged by opposing intervenors, including 5 railroad stockholders, and implicit

in the application, the Commission failed to discharge its [fol. 427] duty under Section 12(1) of the Interstate Commerce Act, 49 U.S.C. § 12(1), to execute and enforce all the provisions of Part I of the Interstate Commerce Act.

(b) In refusing to institute a proceeding to determine whether Section 7 of the Clayton Antitrust Act would be violated by Greyhound's acquisition of Railway Express's stock under the circumstances and conditions outlined in Railway Express's application, the Commission failed in its duty under Section 11 of the Clayton Antitrust Act, 15 U.S.C. § 21, to enforce compliance with Section 7 of that Act by common carriers subject to the Interstate Commerce Act.

(c) The Commission's denial of the petitions of intervening plaintiffs and other opposing intervenors for a hearing to investigate whether the proposed transaction would violate Section 5(4) of the Interstate Commerce Act and Section 7 of the Clayton Antitrust Act, and would therefore be inconsistent with the statutory requirements of Sections 20a and 214, and to test the accuracy of Railway Express's contrary statements, constituted a capricious abuse of its discretion and deprived intervening plaintiffs, and the other parties opposing the application, of a fair opportunity to present evidence in opposition to the application, in violation of due process of law.

(d) The Commission's finding that Railway Express's proposed issuance of stock for sale to Greyhound meets the requirements of Section 20a and 214 is not based upon sufficient evidence to satisfy the statutory requirements of those sections and is legally deficient, because such finding is grounded upon unsubstantiated facts and self-serving statements by Railway Express and Greyhound.

Wherefore, intervening plaintiffs pray:

(a) That in accordance with Rule 4 of the Federal Rules of Civil Procedure, this Court order process to issue

against the defendants, United States of America and Interstate Commerce Commission;

(b) That in accordance with Section 2284(1) of Title 28 of the United States Code, this Court immediately notify the Chief Judge of the United States Court of Appeals for this circuit who shall designate two other judges, at least one of whom shall be a Circuit Judge, to serve as members of the Court to hear and determine this action;

(c) That upon final hearing, the Court find that the [fol. 428] orders of the defendant Interstate Commerce Commission served March 16, 1965, and June 4, 1965, in the Commission's Docket No. 23324, are unlawful, null, and void;

(d) That the Court enter judgment to permanently suspend, enjoin, annul, and set aside the orders of the defendant Interstate Commerce Commission complained of herein, and that the Court remand this matter to the Commission for further proceedings consistent with the Court's opinion;

(e) That the Court grant such other and further relief in the premises as it deems just and proper.

Respectfully submitted,

Peter T. Beardsley, Richard R. Sigmon, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N. W. Washington, D. C. 20036;

Roland and Rice, Rice, Carpenter & Carraway, 618 Perpetual Building, Washington 4, D. C.;

Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, Attorneys for Intervening Plaintiffs.

Of Counsel: Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado.

Certificate of Service (omitted in printing).

[fol. 429]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

COMPLAINT—Filed July 14, 1965

Comes now Freight Forwarders Institute, an intervening plaintiff in the above-entitled cause, and for its action against defendants respectfully shows:

I

Intervening plaintiff is a nonprofit organization, the membership of which is composed of freight forwarders operating as such under permits issued by the Interstate Commerce Commission and subject to the jurisdiction of that body under Part IV of the Interstate Commerce Act (49 U.S. Code § 1001 to 1022, both inclusive).

Intervening plaintiff's members are in direct competition with Railway Express Agency (REA) and with Greyhound Corporation in the movement of package freight between points in the continental United States.

II

Intervening plaintiff was a party to one of the proceedings underlying this suit, viz., Finance Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* and filed pleadings and briefs therein with the said Commission.

[fol. 430]

III

Intervening plaintiff adopts and incorporates herein by reference, as though rewritten, all of the statements and

[File endorsement omitted]

allegations made in numbered paragraphs 3, 4, 5, 6 (so far as it relates to the proceedings in Finance Docket No. 23324), 8, 9 (adding that freight forwarders in the ordinary conduct of their business compete directly with both REA and Greyhound), 10, 12 (so far as it relates to Finance Docket No. 23324), 13, 15, and 16 (so far as it relates to Finance Docket No. 23324), and the prayer of plaintiffs, except so far as it relates to a temporary restraining order, since the Commission, by order dated June 16, 1965, taking note of this suit, postponed the effective date of its order of May 28, 1965, for an indefinite time.

IV

Intervening plaintiff additionally alleges that if this transaction is permitted by the Commission the end result will be the creation of a monopoly in favor of REA and Greyhound in the handling of less-than-carload (package) freight and destructive competitive practices in violation of the said Interstate Commerce Act.

Respectfully submitted,

Edward T. Lyons, Jr., 420 Denver Club Bldg., Denver, Colorado; Harry C. Ames, 527 Transportation Bldg., Washington, D. C. 20006; Giles Morrow, 1012 Fourteenth St., N.W., Washington, D. C. 20005, Attorneys for Intervening Plaintiff.

Of Counsel: Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado.

[fol. 431]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

COMPLAINT IN INTERVENTION—Filed July 16, 1965

Come Now Ringsby Truck Lines, Inc.; Navajo Freight Lines, Inc.; Denver Chicago Trucking Company, Inc.; Illinois-California Express, Inc.; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Western Gillette, Inc.; IML Freight, Inc.; and Consolidated Copperstate Lines, intervening plaintiffs in this cause, by their attorneys, and for their action against defendants respectfully allege and show:

1.

This is a proceeding to enjoin, set aside, annul, and suspend, Orders entered on March 15, 1965, and May 28, 1965, by the Interstate Commerce Commission (hereinafter referred to as the "Commission") in administration proceedings identified as Finance Docket No. 23324, *Railway Express, Incorporated, Stock,* and Finance Docket No. 23374, *Southern Pacific Company* v. *Greyhound Corporation and Railway Express, Incorporated,* brought by The Denver and Rio Grande Western Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Southern Pacific Company.

2.

These intervening plaintiffs are corporations, as described in Exhibit A hereto attached and made a part

[File endorsement omitted]

hereof, and are common carriers of property by motor vehicle and are subject to the Interstate Commerce Act (49 U.S.C. §1, et seq.), in respect of their interstate operations.

Each of said plaintiffs competes over one or more of its authorized routes with Railway Express Agency, Incorporated, hereinafter referred to as "REA") and with Grey- [fol. 432] hound Corporation (hereinafter referred to as "Greyhound") or corporations controlled by it, in the transportation of property for hire.

3.

The United States of America was made a defendant in this proceeding pursuant to Title 28, United States Code, Section 2322. Defendant Interstate Commerce Commission is an agency of the United States, created pursuant to the Interstate Commerce Act (49 U.S.C. 31, et seq.).

4.

This is a civil action, and jurisdiction of this Court was invoked under Sections 1336, 2284, and 2321 through 2325, inclusive, of Title 28, United States Code.

5.

Venue lies in this judicial district under Section 1398 of Title 28, United States Code, because the principal office of an original plaintiff, The Denver and Rio Grande Western Railroad Company is in this district. These plaintiffs were permitted to intervene in Finance Docket No. 23324, orders in which are the subject of this action, by order of the Commission dated February 5, 1965, copy of which is attached hereto as Exhibit B and made a part hereof; and as parties in interest to said proceeding before the Commission, are entitled to intervene in this action as of right, pursuant to the provisions of United States Code, Title 28, §2323.

This controversy, insofar as these intervening plaintiffs are involved, arises out of a proceeding before the Commission in Finance Docket No. 23324 which was instituted by application filed on or about October 7, 1964, by REA under Sections 20a and 214 of the Interstate Commerce Act (49 U.S.C. §20a and 314), for authority to issue 500,000 shares, constituting about twenty percent, of REA's authorized common stock to Greyhound at the price of $20 per share upon the following terms and conditions:

(a) The REA By-Laws will be amended so that The Greyhound Corporation shall be permitted to name 20% of the REA Board of Directors.

(b) The REA Board shall adopt a resolution declaring the intention of refinancing, if necessary, the $27,-[fol. 433] 637,054 of outstanding 5% notes, issued originally to REA's stockholders, or otherwise securing the waiver or cancellation of the prohibition against payment of dividends.

(c) The REA Board shall adopt a resolution declaring the intention to consider seriously and work toward a long-term agreement between REA and The Greyhound Corporation to consolidate operating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage.

(d) The REA Board shall adopt a resolution declaring the intention to consider seriously at a later time the sale of some REA stock to airlines and/or the general public if and when conditions appear favorable to the best interests of REA as a company.

(e) The Greyhound Corporation shall offer to purchase up to 1,000,000 shares of the common stock of REA from present shareholders at a price of $20 per

share cash. Such offer to purchase will remain open and in full force and effect for a period of sixty days following the closing date of the transaction involving the 500,000 authorized unissued shares of REA.

(f) The offer of REA shall expire at 12:00 Noon on December 31, 1964.

(g) The offer of REA may be accepted immediately, subject to all necessary authorizations from the Interstate Commerce Commission and to approval by the shareholders of this corporation of (i) the issuance to The Greyhound Corporation pursuant to said offer of 500,000 shares of authorized but unissued common stock of this corporation and (ii) the amendments to the By-Laws of this corporation required by subparagraph (a) of said offer.

On or about October 30, 1964, Southern Pacific Company filed a complaint with the Commission, naming REA and Greyhound as defendants, and sought to have the proposed transaction for sale by REA of 500,000 shares of its common stock declared unlawful under Section 5(4) of the Interstate Commerce Act (49 U.S.C. §5(4)), unless an application were presented to and authority secured from the Commission under Section 5(2)(b) of the Act (49 U.S.C. §5(2)(b)). These intervening plaintiffs did not seek to intervene in the said complaint proceeding, designated Finance Docket No. 23374, nor did they participate therein before the Commission.

7.

Attached to the original complaint in this action are copies of the material records in the proceedings in Finance Docket 23324, duly certified to by the Secretary of the Commission, according to law (Title 49, U.S.C., §16(13)), which records are made a part of this complaint by reference, and are hereinafter referred to collectively as the "record" and respectively by the names of the documents comprising such record.

[fol. 434]

8.

Greyhound is a corporation having its principal place of business at Chicago, Illinois, and is a common carrier by express and motor vehicle, or controls common carriers by express or motor vehicle, and is engaged in the transportation of property and passengers between points in all states of the United States except Alaska and Hawaii and, as such, Greyhound is subject to the provisions of the Interstate Commerce Act.

9.

REA and Greyhound are competitors for the transportation of property between points in all states of the United States except Alaska and Hawaii.

10.

In the proceeding in Finance Docket No. 23324, these intervening plaintiffs filed a petition for leave to intervene and a request for formal hearing, and were permitted to intervene by order of the Commission dated February 5, 1965 (Exhibit B of this Complaint). Petitions for leave to intervene and protests in opposition requesting formal hearing were also filed by The Denver and Rio Grande Western Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railroad Company, St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, and Southern Pacific Company, Freight Forwarders Institute, representing freight forwarders, American Trucking Associations, Inc., Regular Common Carrier Conference, National Trailways Bus System, an association, and seventeen motor bus companies. The only party petitioning for leave to intervene in support of the application was Greyhound. The United States Department of Justice filed a petition for leave to intervene, requesting oral hearings, a prehearing conference, and consolidation with a proceed-

ing to determine the lawfulness of the proposed transaction under Section 7 of the Clayton Act. National Trailways Bus System and several motor bus companies, in their petitions requested an order requiring Greyhound to file an application under Section 5 of the Interstate Commerce Act, and requesting consolidation and hearing of such application on a common record with the application for authority to issue said stock. Finance Board No. 2 of the Commission certified the application to Division 3 for determination.

[fol. 435] 11.

The Commission held no hearings whatever in Finance Docket No. 23324 or in Finance Docket No. 23374, and by order entered March 15, 1965, by Division 3, in both of said cases, denied the petition of interveners for a hearing, dismissed the complaint in Finance Docket No. 23374, and in Finance Docket No. 23324, authorized REA to issue 500,000 shares of its common stock as prayed.

12.

On April 6, 1965 these intervening plaintiffs filed a petition to stay the effect of the Commission's order of March 15, 1965 pending filing of a petition for reconsideration. A similar petition was filed on April 1, 1965, by American Trucking Associations, Inc., and Regular Common Carrier Conference, and on or about April 8, 1965, by Freight Forwarders Institute. Within the time permitted by law, these intervening plaintiffs, jointly with the American Trucking Associations, Inc. and Regular Common Carrier Conference, filed a petition for reconsideration of the order of the Commission dated March 15, 1965, in which the Commission was requested to hold hearings in Finance Docket No. 23324 to determine whether the proposed stock issue was in conformity with the requirements of Section 5, 20a and 214 of the Interstate Commerce Act, the national transportation policy, and with Section 7 of the Clayton

Act. Petitions for reconsideration were also timely filed by The Denver and Rio Grande Western Railroad Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Freight Forwarders Institute, and Transcontinental Bus System, Inc., et al. On April 16, 1965, the Commission issued a notice stating that the Commission's Order of March 15, 1965, was stayed pending disposition of the matter. Finally, by Order entered May 28, 1965, the Commission, by Division 3 acting as an appellate division, denied the petitions for reconsideration of said Order of March 15, 1965, providing that it should become effective twenty days from May 28, 1965. Subsequently, a Corrected Order, entered May 28, 1965, was issued, directing that the Order of March 15, 1965, become effective twenty days from June 4, 1965.

[fol. 436] 13.

The Commission, in making and issuing said orders of March 15, 1965 and May 28, 1965 erred as a matter of law and in abuse of its discretion in the following particulars:

(a) In that the Commission failed and refused to conduct an investigative hearing required to determine, or to consider or determine, whether the effect of the acquisition by Greyhound of a twenty percent of the share capital of REA, issuance of which was authorized by its order of March 15, 1965, may be substantially to lessen competition in, or tend to create a monopoly of, the transportation of express or other freight traffic in the United States or any section thereof, in violation of Section 7 of the Clayton Act (15 U.S.C. §18).

(b) In that the Commission's findings that "... an investigation of whether the proposed transaction, or further prospective agreements between applicant

(REA) and Greyhound, might violate the provisions of section 5, or section 7 of the Clayton Act, would not be appropriate at this time . . . " was an abuse of its discretion, and an abdication of the authority and responsibility committed to it for enforcement, with respect to common carriers, of the provisions of Section 7 of the Clayton Act, in violation of Section 11 of the Clayton Act (15 U.S.C. §21).

(c) In that the Commission's report and order failed to make findings requisite to support its conclusion of law that the proposed issuance of stock by REA " . . . is for a lawful object within its corporate purposes and compatible with the public interest . . . " particularly findings that the probable effect of the acquisition would not be substantially to lessen competition or to tend to creation of a monopoly, in light of the avowed non-investment purpose of the acquisition, implicit in the terms and conditions of the issuance set forth in paragraph 6 of this complaint.

[fol. 437] (d) In that the Commission failed and refused, in violation of due process of law, and despite its duty under Sections 20a(2) and 214 of the Interstate Commerce Act, 49 U.S.C., §§20a(2) and 314, to investigate the purposes and uses of the proposed issue and the proceeds thereof, to conduct hearings as requested by plaintiffs and other parties in Finance Docket No. 23324 desiring to present evidence in opposition to the application therein, in order to determine whether the transaction set forth in paragraph 6 hereof was in violation of Section 5(4) of the Interstate Commerce Act.

(e) In that the Commission's findings set forth in its order of March 15, 1965, in support of its approval of the application of REA in Finance Docket No. 23324 are deficient in that they were made upon mere allegations in the pleadings without the benefit of hearings,

and without benefit of evidence in opposition, and consequently were not supported by substantial evidence on the record considered as a whole.

(f) In that the Commission has failed to set forth any rational explanation that would disclose the basis upon which the findings and conclusions of its order of March 15, 1965 were reached.

14.

If the Orders of March 15, 1965, and May 28, 1965, are enforced, said Orders will cause plaintiffs to suffer immediate and irreparable damage, in that:

(a) Once the transaction is approved and consummated, it would be extremely difficult, if not impossible, to secure the divestment of control by Greyhound and to restore the status quo at a later date and, in any event, plaintiffs would be compelled to incur substantial expense in lengthy and complicated legal proceedings to that end.

(b) If said orders of March 15, 1965 and of May 28, 1965 are permitted to become effective, and Greyhound is permitted to acquire a twenty percent stock interest [fol. 438] in REA, competition for transportation of express traffic would be substantially lessened and a tendency toward monopoly of such transportation set in motion which would handicap and in time foreclose the competition of these plaintiffs for transportation of express and other traffic.

Wherefore, plaintiffs pray:

1. That process may issue against defendants, the United States of America and the Interstate Commerce Commission.

2. That a Court constituted as required by Title 28 of the United States Code, Sections 2284 and 2321-2325, consisting of three judges, be convened.

3. That the Court permanently set aside, annul and suspend the Commission's Orders and grant a permanent injunction against their operation, enforcement and execution.

4. That plaintiffs recover their proper costs.

5. That plaintiffs have such other and further relief as may be appropriate.

David Axelrod, 39 South LaSalle Street, Chicago, Illinois 60603; Eugene T. Liipfert, Berl I. Bernhard, 1035 Universal Building North, Washington, D. C. 20009; Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado 80202; Attorneys for Intervening Plaintiffs.

Of Counsel:

Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603.

Verner, Liipfert and Bernhard, 1035 Universal Building North, Washington, D. C. 20009.

Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado.

[fol. 439]

EXHIBIT A TO COMPLAINT IN INTERVENTION

Plaintiff Ringsby Truck Lines, Inc. is a corporation organized under the laws of the State of Nebraska, having its principal office at Denver, Colorado, and operating as a motor common carrier of property in eleven states.

Plaintiff Navajo Freight Lines, Inc. is a corporation organized under the laws of the State of New Mexico, having its principal office in Denver, Colorado, and operating as a motor common carrier of property in fourteen states.

Plaintiff Denver Chicago Trucking Co., Inc, is a corporation organized under the laws of the State of Nebraska, having its principal office at Denver, Colorado, and operating as a motor common carrier of property in twenty-one states.

Plaintiff Illinois-California Express, Inc. is a corporation organized under the laws of the State of Nebraska, having its principal office in Denver, Colorado, and operating as a motor common carrier of property in twelve states.

Plaintiff Pacific Intermountain Express Co. is a corporation organized under the laws of the State of Nevada, having its principal office in Oakland, California, and operating as a motor common carrier of property in sixteen states.

Plaintiff Transcon Lines is a corporation organized under the laws of the State of California, having its principal office at Los Angeles, California, and operating as a motor common carrier of property in thirteen states.

Plaintiff Watson-Wilson Transportation System, Inc. is a corporation organized under the laws of the State of Nebraska, having its principal office at Omaha, Nebraska, and operating as a motor common carrier of property in sixteen states.

Plaintiff Western Gillette, Inc. is a corporation organized under the laws of the State of California, having its principal office at Los Angeles, California, and operating as a motor common carrier of property in twelve states.

[fol. 440] Plaintiff IML Freight, Inc. is a corporation organized under the laws of the State of Utah, having its principal office at Salt Lake City, Utah, and operating as a motor common carrier of property in fifteen states.

Plaintiff Consolidated Copperstate Lines is a corporation organized under the laws of the State of California, having its principal office at Montebello, California, and operating as a motor common carrier of property in six states.

[fol. 441]

EXHIBIT B TO COMPLAINT IN INTERVENTION

SERVICE DATE:
February 17, 1965

ORDER

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 23324

RAILWAY EXPRESS AGENCY, INCORPORATED—
STOCK ISSUANCE

In the Matter of Petition for Leave to Intervene

PRESENT: Kenneth H. Tuggle, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and petition for leave to intervene on behalf of Denver Chicago Trucking Company, Inc., Consolidated Freightways Corporation of Delaware and Missouri Consolidated Freightways Corporation, Illinois-California Express, Inc., Navajo Freight Lines, Inc., Pacific Intermountain Express Co., Transcon Lines, in its own right and as operator of Indianapolis-Kansas City Motor Express Co. and Decatur Seaway Motor Express, Inc., Watson-Wilson Transportation System, Inc., Ringsby Truck Lines, Inc., Western Gillette, Inc., Interstate Motor Lines, Inc., T.I.M.E. Freight, Inc., and Consolidated Copperstate Lines; and good cause appearing:

It is ordered, That said petitioners be, and they are hereby, permitted to intervene in this proceeding.

Dated at Washington, D. C. this 5th day of February, By the Commission, Commissioner Tuggle.

BERTHA F. ARMES
Acting Secretary.

(SEAL)

[fol. 442]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

COMPLAINT OF INTERVENING PLAINTIFFS—
Filed November 10, 1965

Now comes Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches, Ltd., Inc., Bayshore Buslines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, intervening Plaintiffs in the above entitled and numbered cause, and for cause of action would respectfully show:

I.

Transcontinental Bus System, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity No. MC-109780 and subs thereunder. Transcontinental is a Delaware corporation, with principal offices located at 315 Continental Avenue, Dallas, Dallas County, Texas.

American Buslines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the

[File endorsement omitted]

same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-2890 and subs thereunder. American is a Delaware corporation, with principal offices located at 1805 Leavenworth Street, Omaha, Nebraska.

[fol. 443] Arkansas Motor Coaches Ltd., Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-60026 and subs thereunder. Arkansas is an Arkansas corporation, with principal offices located at 106 East Markham, Little Rock, Arkansas.

Bayshore Buslines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity No. MC-11929 and subs thereunder. Bayshore is a Texas corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Bus System, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-107586 and subs thereunder. Continental is a Tennessee corporation, with principal offices located at 315 Continental Avenue, Dallas, Texas.

Continental Crescent Lines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Public Convenience and Necessity, No. MC-114271 and subs thereunder. Crescent is a Dela-

ware corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Panhandle Lines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-8742 and subs thereunder. Panhandle is a Texas corporation, with principal offices located at 400 Monroe Street, Amarillo, Texas.

Continental Southern Lines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. [fol. 444] MC-29957 and subs thereunder. Southern is a Louisiana corporation, with principal offices located at 425 Bolton Avenue, Alexandria, Louisiana.

Continental Tennessee Lines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-55312 and subs thereunder. Tennessee is a Delaware corporation, with principal offices located at 418 Fifth Avenue, South, Nashville, Tennessee.

Denver-Colorado Springs-Pueblo Motorway is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-28462 and subs thereunder. D.C.S.P. is a Colorado corporation, with principal offices located at 1669 Broadway, Denver, Colorado.

Denver-Salt Lake-Pacific Stages, Inc., is a common carrier of passengers, their baggage, express and newspapers

in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-1097 and subs thereunder. D.S.L.P. is a Colorado corporation, with principal offices located at 1669 Broadway, Denver, Colorado.

Continental Pacific Lines, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-89037 and subs thereunder. Pacific is a California corporation, with principal offices located at 1501 South Central Avenue, Los Angeles, California.

Midwest Buslines, Inc. is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-61616 and subs thereunder. Midwest is a Delaware corporation, with principal offices located at 433 West Washington Avenue, North Little Rock, Arkansas.

Muscatine, Davenport and Clinton Bus Co., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and [fol. 445] Necessity, No. MC-107562 and subs thereunder. M.D.&C. is an Iowa corporation, with principal offices located at 1805 Leavenworth Street, Omaha, Nebraska.

Smoky Mountain Stages, Inc. is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-61598 and subs thereunder. Smoky is a North Carolina

corporation, with principal offices located at 417 West Fifth Street, Charlotte, North Carolina.

Tennessee Trailways, Inc., is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-8500 and subs thereunder. Tennessee Trailways is a Virginia corporation, with principal offices located at 710 Sevier Avenue, Knoxville, Tennessee.

Union Bus Lines, Inc. is a common carrier of passengers, their baggage, express and newspapers in the same vehicle with passengers, over regular routes, under authority granted to it by the Interstate Commerce Commission in Certificates of Convenience and Necessity, No. MC-57298 and subs thereunder. Union is a Texas corporation, with principal offices located at 315 Continental Avenue, Dallas, Texas.

Under their authority, the intervening Plaintiffs operate motor buses throughout the United States, and are in direct competition with Railway Express Agency, Inc., and The Greyhound Corporation for the movement of package express between points within the continental United States.

II.

Intervening Plaintiffs were parties of record in the proceedings before the Interstate Commerce Commission in Finance Docket No. 23324, *Railway Express Agency, Inc., Stock,* and actively and continuously participated therein. The Order in Finance Docket No. 23324 is one of the Orders of the Interstate Commerce Commission which the Plaintiffs herein seek to set aside.

III.

Intervening Plaintiffs adopt and incorporate herein by reference, as though rewritten, all of the statements and

allegations made by Plaintiffs in numbered paragraphs 1, [fol. 446] 3, 4, 5, 6, (so far as it relates to the proceedings in Finance Docket No. 23324), 8, 9, 10, 12 (so far as it relates to Finance Docket No. 23324), 13, 15, 16 (so far as it relates to Finance Docket No. 23324), and Plaintiffs prayer, except as it relates to a temporary authority order, of Plaintiffs' Complaint.

Respectfully submitted,

Warren A. Goff, D. Paul Stafford, 315 Continental Avenue, Dallas, Texas 75207, Attorneys for Movants.

Of Counsel: John R. Barry, Barry and Boyle, Attorneys at Law, 946 Metropolitan Building, Denver, Colorado.

Certificate of Service (omitted in printing).

[fol. 447]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, and SOUTHERN PACIFIC COMPANY, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

RAILWAY EXPRESS AGENCY, INCORPORATED, Intervenor-Defendant.

ANSWER OF INTERVENOR-DEFENDANT, RAILWAY EXPRESS AGENCY, INCORPORATED—Filed June 23, 1965

Intervenor-Defendant, Railway Express Agency, Incorporated (REA), for its answer to the complaint herein:

1. Admits the averments of paragraphs 1 through 5, 11 and 15 thereof.

2. Admits the averments of paragraph 6 thereof and respectfully refers the Court to the applications referred to therein for their content.

3. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7 thereof. Counsel for REA will at their

[File endorsement omitted]

first opportunity determine whether the record described in paragraph 7 is complete and accurate.

4. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments [fol. 448] of paragraph 8 thereof, except admits that the Greyhound Corporation (Greyhound) is a corporation and controls at least one corporation engaged in the transportation of property and passengers between points in certain states and is subject to some of the provisions of the Interstate Commerce Act.

5. Denies each and every averment of paragraph 9 thereof except admits that Greyhound and REA are competitors in a limited sense for the transportation of property between certain points in all states of the United States, except Alaska and Hawaii, and, in this respect, REA alleges that Greyhound is limited in its competition with REA in that Greyhound can only transport property on its passenger vehicles and that, as a result, there is a limitation upon size, weight, volume and character of property which it can transport. Accordingly, the competition between REA and Greyhound for the transportation of such small shipments is nominal. Moreover, in the aggregate the volume of small shipments transported by both REA and Greyhound is also nominal as compared to the total of all such shipments.

6. Denies each and every averment of paragraph 10 thereof, except that the parties named therein filed petitions for leave to intervene in Finance Docket No. 23324 and respectfully refers the Court thereto for their content, that some of the parties requested a hearing and that Finance Board No. 2 of the Commission certified the application in Finance Docket No. 23324 to Division 3 of the Commission for determination.

7. With respect to the averments of paragraph 12 thereof, respectfully refers the Court to the records and orders of the Commission for the full and complete con-

tent, and further avers that, pursuant to the provisions of Section 20a(6) of the Interstate Commerce Act, which provides in part, that "the Commission may hold hearings, if it sees fit . . . ", the Commission was not required to hold [fol. 449] a hearing with respect to the application in Finance Docket No. 23324, and further avers that, pursuant to the provisions of Section 5(7) of the Interstate Commerce Act, the Commission was not authorized to grant the relief requested in Finance Docket No. 23374, and that in any case the relief requested therein was clearly premature.

8. Admits the averments of paragraph 13 thereof, except respectfully refers the Court to the petitions and orders referred to therein for their content and conditions thereof.

9. Denies the averments of paragraphs 14, 16 and 18 thereof.

Wherefore, Intervenor-Defendant, Railway Express Agency, Incorporated, demands judgment dismissing the complaint together with expenses and disbursements.

Dated June 23, 1965.

Hodges, Silverstein & Harrington, Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated, 1360 Denver Club Building, Denver, Colorado 80202, 534-0211.

Of Counsel:

William J. Taylor, 219 E. 42nd Street, New York, New York 10017.

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York 10005.

[fol. 450]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT THE GREYHOUND CORPORATION—Filed July 16, 1965

Comes Now intervenor-defendant The Greyhound Corporation and for answer to the complaint herein respectfully admits, denies, and alleges as follows:

1. Admits the allegations of Paragraph 1 of said complaint.

2. Admits the allegations of Paragraph 2 of said complaint.

3. Admits the allegations of Paragraph 3 of said complaint.

[fol. 451] 4. Admits the allegations of Paragraph 4 of said complaint.

5. Admits the allegations of Paragraph 5 of said complaint.

6. Admits the allegations of Paragraph 6 of said complaint, except that this intervenor-defendant refers the Court to the application and the complaint referred to in said paragraph for their contents.

7. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of said complaint, since the copy of the complaint served upon this intervenor-defendant did not have the accompanying material referred to in said Paragraph 7.

[File endorsement omitted]

8. Answering the allegations of Paragraph 8 of said complaint, admits that this intervenor-defendant The Greyhound Corporation has its principal place of business in Chicago, Illinois, and that it owns all of the capital stock of Greyhound Lines, Inc., a common carrier by bus engaged in the transportation of property and passengers between points in all states of the United States, except Alaska and Hawaii, and that as such said Greyhound Lines, Inc., is subject to the provisions of the Interstate Commerce Act.

9. Answering the allegations of Paragraph 9 of said complaint, this intervenor-defendant admits that REA and Greyhound Lines, Inc., are competitors in a limited sense for the transportation of property between certain points in the United States, except Alaska and Hawaii, and in this behalf alleges that Greyhound Lines, Inc., is limited in its competition with REA in that it can only transport property on its passenger vehicles and that as a result there is a limitation upon the size, weight, volume, and [fol. 452] character of property which it can transport. This intervenor-defendant further alleges that in the transportation of small shipments in the United States Greyhound Lines, Inc., handles substantially less than 1% of the total, REA handles approximately 2% of the total, and the remaining 97+% is handled by truckers, freight forwarders, railroads, and the United States Post Office through its Parcel Post, so that presently the competition between REA and Greyhound Lines, Inc., for the transportation of small shipments is nominal.

10. Admits the allegations of Paragraph 10 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petitions referred to in said paragraph for the content of said petitions.

11. Admits the allegations of Paragraph 11 of said complaint.

12. Admits the allegations of Paragraph 12 of said complaint, except that this intervenor-defendant refers the

Court to the orders of the Commission for the content of said orders.

13. Admits the allegations of Paragraph 13 of said complaint, except that this intervenor-defendant refers the Court to the petitions and orders referred to therein for their contents.

14. Denies the allegations of Paragraph 14 of said complaint.

15. Admits the allegations of Paragraph 15 of said complaint.

16. Denies the allegations of Paragraph 16 of said complaint.

[fol. 453] 17. Denies the allegations of Paragraph 17 of said complaint.

18. Denies the allegations of Paragraph 18 of said complaint.

Wherefore, intervenor-defendant The Greyhound Corporation prays judgment dismissing the complaint, together with its expenses and disbursements.

Dated: July 12, 1965.

Dawson, Nagel, Sherman & Howard, By Winston S. Howard, A Member of the Firm, Attorneys for Intervenor-Defendant The Greyhound Corporation, 1900 First National Bank Bldg., Denver, Colorado 80202.

Of Counsel:

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California 94108.

[fol. 454] Certificate of Mailing (omitted in printing).

[fol. 455]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

AMENDED ANSWER OF INTERVENOR-DEFENDANT RAILWAY EXPRESS AGENCY, INCORPORATED—Filed July 12, 1965

Intervenor-Defendant, Railway Express Agency, Incorporated (REA), for its amended answer to the complaint herein:

1. Admits the averments of paragraphs 1 through 5, 11 and 15 thereof.

2. Admits the averments of paragraph 6 thereof and respectfully refers the Court to the applications referred to therein for their content.

3. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7 thereof. Counsel for REA will at their first opportunity determine whether the record described in paragraph 7 is complete and accurate.

[fol. 456] 4. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 thereof, except admits that the Greyhound Corporation (Greyhound) is a corporation and controls at least one corporation engaged in the transportation of property and passengers between points in certain states and is subject to some of the provisions of the Interstate Commerce Act.

5. Denies each and every averment of paragraph 9 thereof except admits that Greyhound and REA are com-

[File endorsement omitted]

petitors in a limited sense for the transportation of property between certain points in all states of the United States, except Alaska and Hawaii, and, in this respect, REA alleges that Greyhound is limited in its competition with REA in that Greyhound can only transport property on its passenger vehicles and that, as a result, there is a limitation upon size, weight, volume and character of property which it can transport. Accordingly, the competition between REA and Greyhound for the transportation of such small shipments is nominal. Moreover, in the aggregate the volume of small shipments transported by both REA and Greyhound is also nominal as compared to the total of all such shipments.

6. Denies each and every averment of paragraph 10 thereof, except that the parties named therein filed petitions for leave to intervene in Finance Docket No. 23324 and respectfully refers the Court thereto for their content, that some of the parties requested a hearing and that Finance Board No. 2 of the Commission certified the application in Finance Docket No. 23324 to Division 3 of the Commission for determination.

7. With respect to the averments of paragraph 12 thereof, respectfully refers the Court to the records and [fol. 457] orders of the Commission for the full and complete content, and further avers that, pursuant to the provisions of Section 20a(6) of the Interstate Commerce Act, which provides in part, that "the Commission may hold hearings, if it sees fit . . .", the Commission was not required to hold a hearing with respect to the application in Finance Docket No. 23324, and further avers that, pursuant to the provisions of Section 5(7) of the Interstate Commerce Act, the Commission was not authorized to grant the relief requested in Finance Docket No. 23374, and that in any case the relief requested therein was clearly premature.

8. Admits the averments of paragraph 13 thereof, except respectfully refers the Court to the petitions and orders referred to therein for their content and conditions thereof.

9. Denies the averments of paragraphs 14 and 16 through 18 thereof.

Wherefore, Intervenor-Defendant, Railway Express Agency, Incorporated, demands judgment dismissing the complaint together with expenses and disbursements.

Dated July 12, 1965.

Hodges, Silverstein & Harrington, By Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated, 1360 Denver Club Building, Denver, Colorado 80202, 534-0211.

Of Cousel:

William J. Taylor, 219 E. 42nd Street, New York, New York 10017;

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York 10005.

[fol. 458]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT THE GREYHOUND CORPORATION TO THE COMPLAINT OF INTERVENING PLAINTIFFS AMERICAN TRUCKING ASSOCIATIONS, INC., AND REGULAR COMMON CARRIER CONFERENCE—Filed August 12, 1965

Comes Now intervenor-defendant The Greyhound Corporation and for answer to the complaint of intervening plaintiffs American Trucking Associations, Inc., and Regu-

[File endorsement omitted]

lar Common Carrier Conference respectfully admits, denies and alleges as follows:

1. Admits the allegations of Paragraph 1 of said complaint.

2. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of said complaint.

3. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of said complaint.

4. Admits the allegations of Paragraph 4 of said complaint, except that this intervenor-defendant respectfully refers the Court to the application referred to in said paragraph for the contents of said application.

[fol. 459] 5. Admits the allegations of Paragraph 5 of said complaint, and in this behalf alleges that the railroad stockholders of Railway Express Agency, Incorporated, have a right of first refusal to buy the 1,000,000 additional shares referred to in said paragraph.

6. Admits the allegations of Paragraph 6 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petitions referred to in said paragraph for the contents of said petitions.

7. Admits the allegations of Paragraph 7 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petition referred to in said paragraph for the contents of said petition.

8. Admits the allegations of Paragraph 8 of said complaint, except that this intervenor-defendant respectfully refers the Court to the complaint referred to in said paragraph for the contents of said complaint.

9. Admits the allegations of Paragraph 9 of said complaint, except that this intervenor-defendant respectfully refers the Court to the replies and motions referred to in

said paragraph for the contents of said replies and said motions.

10. Admits the allegations of Paragraph 10 of said complaint, except that this intervenor-defendant respectfully refers the Court to the order of the Commission referred to in said paragraph for the contents of said order.

11. Admits the allegations of Paragraph 11 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petitions for reconsideration and order of the Commission referred to in said paragraph for the contents of said petitions and said order.

[fol. 460] 12. Admits the allegations of Paragraph 12 of said complaint.

13. Denies the allegations of Paragraph 13 of said complaint.

Wherefore, intervenor-defendant The Greyhound Corporation prays judgment dismissing the complaint, together with its expenses and disbursements.

Dated: August 12, 1965.

Dawson, Nagel, Sherman & Howard, By Winston S. Howard, A Member of the Firm, Attorneys for Intervenor-Defendant, The Greyhound Corporation, 1900 First National Bank Bldg., Denver, Colorado 80202.

Of Counsel:

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California 94108.

[fol. 461]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT THE GREYHOUND CORPORATION TO THE COMPLAINT IN INTERVENTION OF RINGSBY TRUCK LINES, INC., ET AL.—Filed August 12, 1965

Comes Now intervenor-defendant The Greyhound Corporation and for answer to the complaint in intervention of Ringsby Truck Lines, Inc., et al., respectfully admits, denies and alleges as follows:

1. Admits the allegations of Paragraph 1 of said complaint.

2. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of said complaint.

3. Admits the allegations of Paragraph 3 of said complaint.

4. Admits the allegations of Paragraph 4 of said complaint.

5. Admits the allegations of Paragraph 5 of said complaint.

[fol. 462] 6. Admits the allegations of Paragraph 6 of said complaint, except that this intervenor-defendant refers the Court to the application and the complaint referred to in said paragraph for the contents of said application and said complaint.

7. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations

[File endorsement omitted]

of Paragraph 7 of said complaint since the copy of the original complaint in this action served upon this intervenor-defendant did not have the attached material referred to in said Paragraph 7.

8. Answering the allegations of Paragraph 8 of said complaint, admits that this intervenor-defendant The Greyhound Corporation has its principal place of business in Chicago, Illinois, and that it owns all of the capital stock of Greyhound Lines, Inc., a common carrier by bus engaged in the transportation of property and passengers between points in all states of the United States, except Alaska and Hawaii, and that as such said Greyhound Lines, Inc., is subject to the provisions of the Interstate Commerce Act.

9. Answering the allegations of Paragraph 9 of said complaint, this intervenor-defendant admits that REA and Greyhound Lines, Inc., are competitors in a limited sense for the transportation of property between certain points in the United States, except Alaska and Hawaii, and in this behalf alleges that Greyhound Lines, Inc., is limited in its competition with REA in that it can only transport property on its passenger vehicles and that as a result [fol. 463] there is a limitation upon the size, weight, volume, and character of property which it can transport. This intervenor-defendant further alleges that in the transportation of small shipments in the United States, Greyhound Lines, Inc., handles substantially less than 1% of the total, REA handles approximately 2% of the total, and the remaining 97+% is handled by truckers, freight forwarders, railroads, and the United States Post Office through its Parcel Post, so that presently the competition between REA and Greyhound Lines, Inc., for the transportation of small shipments is nominal.

10. Admits the allegations of Paragraph 10 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petitions referred to in said paragraph for the contents of said petitions.

11. Admits the allegations of Paragraph 11 of said complaint, except that this intervenor-defendant respectfully refers the Court to the order of the Commission referred to in said paragraph for the contents of said order.

12. Admits the allegations of Paragraph 12 of said complaint, except that this intervenor-defendant respectfully refers the Court to the petitions and orders referred to in said paragraph for the contents of said petitions and said orders.

13. Denies the allegations of Paragraph 13 of said complaint.

14. Denies the allegations of Paragraph 14 of said complaint.

Wherefore, intervenor-defendant The Greyhound Corporation prays judgment dismissing the complaint together [fol. 464] with its expenses and disbursements.

Dated: August 12, 1965.

Dawson, Nagel, Sherman & Howard, By Winston S. Howard, A Member of the Firm, Attorneys for Intervenor-Defendant, The Greyhound Corporation, 1900 First National Bank Bldg., Denver, Colorado 80202.

Of Counsel:

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California 94108.

[fol. 465]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT THE GREYHOUND CORPORATION TO COMPLAINT OF INTERVENING PLAINTIFF FREIGHT FORWARDERS INSTITUTE—August 12, 1965

Comes Now intervenor-defendant The Greyhound Corporation and for answer to the complaint of intervening plaintiff Freight Forwarders Institute respectfully admits, denies and alleges as follows:

I

Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph I of said complaint.

II

Admits the allegations of Paragraph II of said complaint.

III

Since said intervening plaintiff in Paragraph III of its said complaint adopts and incorporates herein by reference all of the statements and allegations made in Paragraphs 3, [fol. 466] 4, 5, 6, 8, 9, 10, 12, 13, 15 and 16 of the original complaint on file herein, this intervenor-defendant hereby adopts and incorporates herein by reference its answer to said statements and allegations as set forth in Paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 13, 15 and 16 of its answer to said original complaint.

IV

Denies the allegations of Paragraph IV of said complaint and in this behalf this intervenor-defendant realleges that

in the transportation of small shipments in the United States, its subsidiary Greyhound Lines, Inc., handles substantially less than 1% of the total, REA handles approximately 2% of the total, and the remaining 97+% is handled by truckers, freight forwarders, railroads, and the United States Post Office through its Parcel Post.

Wherefore, intervenor-defendant The Greyhound Corporation prays judgment dismissing the complaint of intervening plaintiff Freight Forwarders Institute, together with its expenses and disbursements.

Dated: August 12, 1965.

Dawson, Nagel, Sherman & Howard, By Winston S. Howard, A Member of the Firm, Attorneys for Intervenor-Defendant, The Greyhound Corporation, 1900 First National Bank Bldg., Denver, Colorado 80202.

Of Counsel:

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California 94108.

[fol. 467]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT RAILWAY EXPRESS AGENCY, INCORPORATED TO COMPLAINT OF INTERVENOR-PLAINTIFFS AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.—Filed August 16, 1965

Intervenor-Defendant, Railway Express Agency, Incorporated (REA), for its answer to the complaint of Intervenor-Plaintiffs, American Trucking Associations, Inc., et al., herein:

1. Admits the averments of paragraphs 1 through 3, 5 and 12 thereof.

2. Admits the averments of paragraph 4 thereof and respectfully refers the Court to the application referred to therein for its content.

3. Denies each and every averment of paragraphs 6 and 7 thereof, except that the parties named therein filed petitions for leave to intervene in Finance Docket No. 23324, and respectfully refers the Court thereto for their content, and that some of the parties, including Intervenor-Plaintiffs herein, requested a hearing.

[fol. 468] 4. Denies each and every averment of paragraph 8 thereof except that Southern Pacific Company, a railroad stockholder of REA, filed a complaint in Finance Docket No. 23374, and respectfully refers the Court thereto for its terms.

5. Admits the averments of paragraph 9 thereof except respectfully refers the Court to the replies, motions and

[File endorsement omitted]

the orders of the Interstate Commerce Commission (Commission) for their complete content.

6. With respect to the averments of paragraphs 10 and 11 thereof, respectfully refers the Court to the records and orders of the Commission for the full and complete content thereof, and further avers that, pursuant to the provisions of Section 20a(6) of the Interstate Commerce Act, which provides in part that "the Commission may hold hearings, if it sees fit . . .", the Commission was not required to hold a hearing with respect to the application in Finance Docket No. 23324; that, pursuant to the provisions of Section 5(7) of the Interstate Commerce Act, the Commission was not authorized to grant the relief requested in Finance Docket No. 23374; and that the relief requested therein was clearly premature.

7. Denies each and every averment of paragraph 13 thereof.

Wherefore, Intervenor-Defendant, REA, demands judgment dismissing the complaint together with expenses and disbursements.

August 16, 1965.

Hodges, Silverstein & Harrington, By Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated, 1360 Denver Club Building, Denver, Colorado 80202, 534-0211.

Of Counsel:

William J. Taylor, Esq., 219 East 42nd Street, New York 10017.

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York 10005.

[fol. 469]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT, RAILWAY EXPRESS AGENCY, INCORPORATED TO COMPLAINT OF INTERVENOR-PLAINTIFFS RINGSBY TRUCK LINES, INC., ET AL.— Filed August 16, 1965

Intervenor-Defendant, Railway Express Agency, Incorporated (REA), for its answer to the complaint of Intervenor-Plaintiffs, Ringsby Truck Lines, Inc., et al., herein:

1. Admits the averments of paragraphs 1 and 3 through 5 thereof.

2. Admits the averments of the first sentence of paragraph 2 thereof and states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments thereof except that one or more Intervenor-Plaintiffs herein competes to a limited extent with REA or the Greyhound Corporation (Greyhound), or one or more corporations controlled by Greyhound, in the transportation of property for hire.

3. Admits the averments of paragraph 6 thereof and respectfully refers the Court to the applications referred [fol. 470] to therein for their content.

4. With respect to paragraph 7 thereof, denies that copies of all the material records in the proceedings in Finance Docket No. 23324 are attached to the original complaint in this action and avers that additional material records in said proceedings, duly certified by the Secretary of the Interstate Commerce Commission (Commission), according to law (Title 49 U.S.C. § 16(13)), will be filed with this Court by counsel for REA in the very near future.

[File endorsement omitted]

5. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 thereof, except admits that Greyhound is a corporation and controls at least one corporation engaged in the transportation of property and passengers between points in certain states and is subject to some of the provisions of the Interstate Commerce Act.

6. Denies each and every averment of paragraph 9 thereof except admits that Greyhound and REA are competitors in a limited sense for the transportation of property between certain points in all states of the United States, except Alaska and Hawaii, and, in this respect, REA alleges that Greyhound is limited in its competition with REA in that Greyhound can only transport property on its passenger vehicles and that, as a result, there is a limitation upon size, weight, volume and character of property which it can transport. Accordingly, the competition between REA and Greyhound for the transportation of such small shipments is nominal. Moreover, in the aggregate the volume of small shipments transported by both REA and Greyhound is also nominal as compared to the total of all [fol. 471] such shipments.

7. Denies each and every averment of paragraph 10 thereof, except that the parties named therein filed petitions for leave to intervene in Finance Docket No. 23324 and respectfully refers the Court thereto for their content; that some of the parties, including intervenor-Plaintiff herein, requested a hearing; and that Finance Board No. 2 of the Commission certified the application in Finance Docket No. 23324 to Division 3 of the Commission for determination.

8. With respect to the averments of paragraph 11 thereof, respectfully refers the Court to the records and orders of the Commission for the full and complete content thereof, and further avers that, pursuant to the provisions of Section 20a(6) of the Interstate Commerce Act, which provides in part, that "the Commission may hold hearings,

if it seems fit . . .", the Commission was not required to hold a hearing with respect to the application in Finance Docket No. 23324; that, pursuant to the provisions of Section 5(7) of the Interstate Commerce Act, the Commission was not authorized to grant the relief requested in Finance Docket No. 23374; and that the relief requested therein was clearly premature.

9. Admits the averments of paragraph 12 thereof except respectfully refers the Court to the petitions and orders referred to therein for the content and conditions thereof.

10. Denies each and every averment of paragraphs 13 and 14 thereof.

Wherefore, Intervenor-Defendant, REA, demands judg-
[fol. 472] ment dismissing the complaint together with expenses and disbursements.

August 16, 1965.

Hodges, Silverstein & Harrington, By Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated, 1360 Denver Club Building, Denver, Colorado 80202, 534-0211.

Of Counsel:

William J. Taylor, Esq., 219 East 42nd Street, New York, N. Y. 10017.

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, N. Y. 10005.

[fol. 473]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF INTERVENOR-DEFENDANT RAILWAY EXPRESS AGENCY, INCORPORATED TO COMPLAINT OF INTERVENOR-PLAINTIFF FREIGHT FORWARDERS INSTITUTE—Filed August 16, 1965

Intervenor-Defendant, Railway Express Agency, Incorporated (REA), for its answer to the complaint of Intervenor-Plaintiff, Freight Forwarders Institute, herein:

1. Admits the averments of the first sentence of paragraph I thereof and states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments thereof except that certain of the members of Intervenor-Plaintiff compete to a limited extent with REA and the Greyhound Corporation in the movement of package freight between certain points in the United States.

2. Admits the averments of paragraph II thereof.

3. With respect to paragraph III thereof, repeats and realleges its answer to paragraphs 3, 4, 5, 6 (in so far as it relates to the proceedings in Finance Docket No. 23324), 8, 9, 10, 12 (in so far as it relates to Finance Docket No. 23324), 13, 15, and 16 (in so far as it relates to Finance [fol. 474] Docket No. 23324) of the original complaint in this action, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the averment, that freight forwarders in the ordinary conduct of their business compete directly with REA and Greyhound, except to the extent set forth in paragraph 1 hereof.

[File endorsement omitted]

4. Denies each and every averment of paragraph IV thereof.

Wherefore, Intervenor-Defendant, REA, demands judgment dismissing the complaint together with expenses and disbursements.

August 16, 1965

Hodges, Silverstein & Harrington, By Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated, 1360 Denver Club Building, Denver, Colorado 80202, 534-0211.

Of Counsel:

William J. Taylor, Esq., 219 East 42nd Street, New York, New York 10017.

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York 10005.

[fol. 475]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT—
Filed August 25, 1965

Plaintiffs, Denver and Rio Grande Western Railroad Company, et al., move the Court for leave to file a Supplemental Complaint, a copy of which is attached hereto as Exhibit A, on the ground that the transactions, occurrences and events stated therein have happened since the date of plaintiffs' original Complaint and that it is in the interest

[File endorsement omitted]

of justice that all issues between plaintiffs and defendants be litigated in this action.

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., 550 Fifteenth Street, Denver, Colorado 80202.

Royce D. Sickler, T. A. White, 1531 Stout Street, Denver, Colorado 80217.

R. K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois 60604.

Harry B. Latourette, C. W. Fiddes, 1517 West Front Street, Tyler, Texas 75702.

Jeremiah C. Waterman, 205 Transportation Building, Washington, D.C. 20006.

By Robert S. Gast, Jr., Attorneys for Plaintiffs.

[fol. 476]

EXHIBIT A TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed October 20, 1965

[fol. 477] To the Honorable Judges for the District Court of the United States for the District of Colorado:

Come Now the plaintiffs above-named by their attorneys and for their Supplemental Complaint filed pursuant to leave granted by Order of this Court on 1965, the plaintiffs above-named respectfully allege and show:

[File endorsement omitted]

1.

Paragraph 1 of the Complaint heretofore filed herein is amended and supplemented so as to read:

"This is a proceeding to enjoin, set aside, annul, and suspend, Orders entered on March 15, 1965, May 28, 1965 and August 11, 1965 by the Interstate Commerce Commission (hereinafter referred to as the "Commission") in administrative proceedings identified as Finance Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* and Finance Docket No. 23374, *Southern Pacific Company* v. *Greyhound Corporation and Railway Express Agency, Incorporated.*"

2.

Paragraph 7 of the Complaint heretofore filed herein is amended and supplemented so as to add, after the word "Commission" in the second line of said paragraph, the following:

"Including the material records of proceedings following the filing of the original Complaint herein,"

3.

Paragraph 13 of the Complaint heretofore filed herein is amended and supplemented so as to add the following sentences at the end thereof:

"Thereafter, on or about June 7, 1965, a petition was filed by Transcontinental Bus System, Inc., et al., requesting the Commission to find that an issue of national transportation importance was involved. Subsequent to the filing of the original complaint herein, [fol. 478] the Commission, by Chairman Webb, on June 16, 1965, issued an Order postponing until further Order of the Commission the effective date of the Order entered on March 15, 1965, as amended by the Corrected Order entered on May 28, 1965. Thereafter, by Order and Corrected Order, both dated August 11,

1965, the Commission acting in General Session (1) recalled the proceedings from Division 3, (2) vacated and set aside the Order of the Appellate Division 3, dated May 28, 1965 and reopened the proceedings for consideration on the present record, (3) on reconsideration affirmed the action taken by Division 3 in its Order dated March 15, 1965, (4) dismissed, as moot, the petition requesting a finding that an issue of general transportation importance is involved, and (5) ordered that the Order of March 15, 1965, as affirmed, be effective 30 days from August 13, 1965. Thereafter, the Commission, by Chairman Webb on August 17, 1965, issued an Order postponing until further Order of the Commission the effective date of the Order of March 15, 1965, as modified by the Corrected Order of August 11, 1965."

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., 55 Fifteenth Street, Denver, Colorado 80202.

Royce D. Sickler, T. A. White, 1531 Stout Street, Denver, Colorado 80217.

R. K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois 60604.

Harry B. Latourette, C. W. Fiddes, 1517 West Front Street, Tyler, Texas 75702.

Jeremiah C. Waterman, 205 Transportation Building, Washington, D.C. 20006, Attorneys for Plaintiffs.

[fol. 479]

VERIFICATION

State of California,
City and County of San Francisco, ss.:

I, , state on oath that I am of Southern Pacific Company, one of the plaintiffs in this proceeding, that I have read the foregoing complaint, and that the allegations of fact contained

therein are true to the best of my knowledge, information and belief.

.....

Subscribed and sworn to before me this day of , 1965.

.....

[fol. 480]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—
Filed August 30, 1965

The United States of America, a defendant in the above action, in answer to the complaint and the intervening complaints neither admits nor denies the allegations thereof. The United States of America neither supports nor opposes the order of the Commission.

John H. D. Wigger, Attorney, Department of Justice, Washington, D. C. 20530.

Robert L. Wright, Acting Assistant Attorney General.

Lawrence M. Henry, United States Attorney, Denver, Colorado.

Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 481]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—
Filed August 28, 1965

Comes now the Interstate Commerce Commission, defendant, and for answer to the complaint of The Denver and Rio Grande Western Railroad Company, et al., herein says:

I.

Defendant admits the allegations contained in paragraph 1 of the complaint, but avers that the entire Commission, by corrected order dated August 11, 1965, vacated and set aside the order of Appellate Division 3, dated May 28, 1965, and, upon reconsideration affirmed the order of Division 3, dated March 15, 1965.

II.

Defendant admits the allegations contained in paragraphs 2 through 5 of the complaint.

III.

Defendant admits the allegations contained in paragraph 6 of the complaint, but respectfully refers the Court to the [fol. 482] application and complaint therein described for a complete statement of their contents.

IV.

Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the aver-

[File endorsement omitted]

ments contained in paragraph 7 of the complaint since the copies of the complaint served on defendant do not have copies of the materials referred to in said paragraph 7. In further answer to the allegations contained in paragraph 7, defendant avers that there have been further Commission proceedings since the filing of the complaint which necessarily render incomplete the material records alleged to have been filed with the complaint.

V.

Answering the allegations contained in paragraph 8 of the complaint, defendant admits that the Greyhound Corporation (Greyhound) has its principal place of business at Chicago, Illinois, controls Greyhound Lines, Inc., a common carrier by bus engaged in the transportation of passengers and property between points in all states of the United States, except Alaska and Hawaii, and that Greyhound is subject to some of the provisions of the Interstate Commerce Act.

VI.

Answering the allegations contained in paragraph 9 of the complaint, defendant admits that REA and Greyhound Lines, Inc., are, to a limited extent, competitors for the transportation of property within the United States, except Alaska and Hawaii.

[fol. 483]

VII.

Defendant admits the allegations contained in paragraph 10 of the complaint, except respectfully refers the Court to the petitions referred to in said paragraph for a true and complete statement of their contents.

VIII.

Defendant admits the allegations contained in paragraph 11 of the complaint.

IX.

Answering the allegations contained in paragraph 12 of the complaint, defendant denies that the Commission "held no hearings whatever in either proceeding," admits that no oral hearings were held, and admits the remaining allegations contained in paragraph 12.

X.

Defendant admits the allegations contained in paragraph 13 of the complaint, except refers the Court to the petitions and orders referred to therein for a true and complete statement of their contents.

XI.

Defendant denies the allegations contained in paragraph 14 of the complaint.

XII.

Defendant admits the allegations contained in paragraph 15 of the complaint, except avers that the order of May 28, 1965, referred to therein has been vacated and superseded by an order of the entire Commission dated August 11, 1965.

[fol. 484]

XIII.

Defendant denies the allegations contained in paragraphs 16 through 18 of the complaint.

XIV.

For further answer to the allegations of the complaint, defendant denies that the orders of the Commission challenged in this action are unlawful for the reasons specified in the complaint or for any other reason whatsoever; and avers that the orders of the Commission under attack are valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

Wherefore, the Interstate Commerce Commission, defendant, having fully answered the complaint, prays that the relief prayed for by the plaintiffs be denied and that their complaint be dismissed.

Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C. 20423; Robert W. Ginnane, General Counsel; Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 485]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 9205

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE COMPLAINT OF INTERVENORS RINGSBY TRUCK LINES, INC., ET AL.—Filed August 28, 1965

Comes now the Interstate Commerce Commission, defendant, and for answer to the complaint filed herein by intervenor, Ringsby Truck Lines, Inc., et al., says:

I.

Defendant admits the allegations contained in paragraph 1 of the complaint, but avers that the entire Commission, by corrected order dated August 11, 1965, vacated and set aside the order of Appellate Division 3, dated May 28, 1965, and, upon reconsideration, affirmed the order of Division 3, dated March 15, 1965.

[File endorsement omitted]

II.

Defendant admits the allegations contained in the first sentence of paragraph 2 of the complaint, but neither admits nor denies the allegations contained in the second [fol. 486] sentence thereof for the reason that such allegations are argumentative and require no answer.

III.

Defendant admits the allegations contained in paragraph 3 through 5 of the complaint.

IV.

Defendant admits the allegations contained in paragraph 6 of the complaint, but respectfully refers the Court to the application and complaint therein described for a true and complete statement of their contents.

V.

Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 7 of the complaint since the copies of the original complaint served on defendant do not have copies of the materials referred to in said paragraph 7. In further answer to the allegations contained in paragraph 7, defendant avers that there have been further Commission proceedings since the filing of the complaint which necessarily render incomplete the material records alleged to have been filed with the original complaint.

VI.

Answering the allegations contained in paragraph 8 of the complaint, defendant admits that the Greyhound Corporation (Greyhound) has its principal place of business [fol. 487] at Chicago, Illinois, controls Greyhound Lines, Inc., a common carrier by bus engaged in the transportation of passengers and property between points in all states

of the United States, except Alaska and Hawaii, and that Greyhound is subject to some of the provisions of the Interstate Commerce Act.

VII.

Answering the allegations contained in paragraph 9 of the complaint, defendant admits that REA and Greyhound Lines, Inc., are, to a limited extent, competitors for the transportation of property within the United States, except Alaska and Hawaii.

VIII.

Defendant admits the allegations contained in paragraph 10 of the complaint, except respectfully refers the Court to the petitions referred to in said paragraph for a true and complete statement of their contents.

IX.

Answering the allegations contained in paragraph 11 of the complaint, defendant denies that the Commission "held no hearings whatever in either proceeding," admits that no oral hearings were held, and admits the remaining allegations contained in paragraph 11.

[fol. 488]

X.

Defendant admits the allegations contained in paragraph 12 of the complaint, except respectfully refers the Court to the petitions and orders referred to therein for a true and complete statement of their contents.

XI.

Defendant denies the allegations contained in paragraphs 13 and 14 of the complaint.

XII.

For further answer to the allegations of the intervening complaint, defendant denies that the orders of the Com-

mission challenged in this action are unlawful for the reasons specified in the intervening complaint or for any other reason whatsoever; and avers that the orders of the Commission under attack are valid in all respects. Except as expressly admitted herein, each and every allegation of the intervening complaint is denied.

Wherefore, the Interstate Commerce Commission, defendant, having fully answered the intervening complaint, prays that the relief prayed for by the intervening plaintiffs be denied and that their complaint be dismissed.

[fol. 489] Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C. 20423; Robert W. Ginnane, General Counsel; Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 490]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE COMPLAINT OF INTERVENORS AMERICAN TRUCKING ASSOCIATIONS, ET AL.—Filed August 28, 1965

Comes now the Interstate Commerce Commission, defendant, and for answer to the complaint filed herein by intervenors, American Trucking Associations, et al., says:

[File endorsement omitted]

I.

Defendant admits the allegations contained in paragraphs 1 through 3 of the complaint.

II.

Defendant admits the allegations contained in paragraphs 4 through 11 of the complaint, except respectfully refers the Court to the various pleadings and orders referred to in the Commission proceedings for a true and complete statement of their contents.

[fol. 491]

III.

Answering the allegations contained in paragraph 12 of the complaint, defendant admits that intervening plaintiffs have exhausted their administrative remedies, but denies that the order of Division 3, acting as an Appellate Division, served on June 4, 1965, is now administratively final, and avers that said order of Division 3 has been vacated and superseded by an order of the entire Commission, served on August 13, 1965, which is administratively final.

IV.

Defendant denies the allegations contained in paragraph 13 of the complaint.

V.

For further answer to the allegations of the complaint, defendant denies that the orders of the Commission challenged in this action are unlawful for the reasons specified in the complaint or for any other reason whatsoever; and avers that the orders of the Commission under attack are valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

Wherefore, the Interstate Commerce Commission, defendant, having fully answered the complaint, prays that the

relief prayed for by the intervening plaintiffs be denied and that their complaint be dismissed.

[fol. 492] Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C. 20423; Robert W. Ginnane, General Counsel; Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 493]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO THE COMPLAINT OF INTERVENOR FREIGHT FORWARDERS INSTITUTE—Filed August 28, 1965

Comes now the Interstate Commerce Commission, defendant, and for answer to the complaint filed herein by intervenor Freight Forwarders Institute, says:

I.

Defendant admits the allegations contained in the first sentence of paragraph I of the complaint, but neither admits nor denies the allegations contained in the second sentence thereof for the reason that such allegations are argumentative and require no answer.

II.

Defendant admits the allegations contained in paragraph II of the complaint.

[File endorsement omitted]

[fol. 494]

III.

Answering the allegations contained in paragraph III of the complaint, wherein intervening plaintiff adopts and incorporates by reference the pertinent statements and allegations contained in paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 13, 15 and 16 of the original complaint filed by plaintiffs, The Denver and Rio Grande Western Railway Company, et al., defendant adopts and incorporates herein by reference its answers given in paragraphs II, III, V, VI, VII, IX, X, XII and XIII of its answer to said original complaint.

IV.

Defendant denies the allegations contained in paragraph IV of the complaint.

V.

For further answer to the allegations of the complaint, defendant denies that the orders of the Commission challenged in this action are unlawful for the reasons specified in the complaint or for any other reason whatsoever; and avers that the orders of the Commission under attack are valid in all respects. Except as expressly admitted herein, each and every allegation of the complaint is denied.

Wherefore, the Interstate Commerce Commission, defendant, having fully answered the complaint of intervenor, [fol. 495] prays that the relief prayed for by the intervening plaintiff be denied and that its complaint be dismissed.

Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C. 20423; Robert W. Ginnane, General Counsel; Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 496]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT—Filed September 7, 1965

Intervening plaintiffs, American Trucking Associations, Inc., and Regular Common Carrier Conference, move the Court for leave to file a supplemental complaint, a copy of which is attached hereto as Exhibit A, on the ground that the transactions, occurrences, and events stated therein have happened since the date of intervening plaintiffs' original complaint and that it is in the interest of justice that all issues between plaintiffs and defendants be litigated in this action.

Respectfully submitted,

Peter T. Beardsley, Richard R. Sigmon, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036;

Roland Rice, Rice, Carpenter & Carraway, 618 Perpetual Building, Washington 4, D. C.;

Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, Attorneys for Intervening Plaintiffs.

Of Counsel: Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado.

[File endorsement omitted]

[fol. 497]

EXHIBIT A TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed October 20, 1965

To the Honorable Judges for the District Court of the United States for the District of Colorado:

Come now intervening plaintiffs, American Trucking Associations, Inc., and Regular Common Carrier Conference by their attorneys and for their supplemental complaint, filed pursuant to leave granted by order of this Court on 1965, respectfully allege and show:

1.

Paragraph 1 of the complaint heretofore filed is amended and supplemented so as to read:

This is an action to suspend, annul, and set aside three orders entered by the defendant Interstate Commerce Commission and served on March 16, 1965, June 4, 1965, and August 13, 1965, in Finance Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* and arises under the provisions of Sections 17 and 205(g) and (h) of the Interstate Commerce Act, 49 U.S.C. §§ 17, 305(g) and (h), Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009, and Sections 1336, 1398, 2284, and 2321 through 2325 of the Judicial Code, 28 U.S.C. §§ 1336, 1398, 2284, and 2321 through 2325. The United States

[File endorsement omitted]

of America is named as a defendant pursuant to Section 2322 of the Judicial Code, 28 U.S.C. § 2322.

[fol. 498]

2.

Paragraph 11 of the complaint heretofore filed is amended and supplemented so as to add the following sentences at the end thereof:

Thereafter, on or about June 7, 1965, a petition was filed by Transcontinental Bus System, Inc., et al., requesting the Commission to find that an issue of national transportation importance was involved. Subsequent to the filing of the original complaint herein, the Commission, by Chairman Webb, on June 17, 1965, issued an order postponing until further order of the Commission the effective date of the order served June 4, 1965. Then, by order and corrected order, both served August 13, 1965, the Commission acting in General Session recalled the proceedings from Division 3, vacated and set aside the order of the Appellate Division 3, served June 4, 1965, and reopened the proceedings for reconsideration on the present record. On reconsideration it affirmed the action taken by Division 3 in its order dated March 16, 1965, dismissed as moot the petition requesting a finding that an issue of general transportation importance is involved, and ordered that the order of March 16, 1965, as affirmed, be effective 30 days from August 13, 1965. Subsequently, the Commission, by Chairman Webb on August 18, 1965, served an order postponing until further order of the Commission the effective date of the order of March 16, 1965, as modified by the corrected order of August 13, 1965.

3.

Paragraph 12 of the complaint heretofore filed is amended and supplemented so as to read:

By Section 17 of the Interstate Commerce Act, 49 U.S.C. § 17, the order of the Commission served August 13, 1965, is administratively final, and intervening plaintiffs have exhausted their administrative remedies.

[fol. 499]

4.

Paragraph 13 of the complaint heretofore filed is amended and supplemented so as to read:

By its orders served March 16, 1965, June 4, 1965, and August 13, 1965, in Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* the defendant Interstate Commerce Commission acted unlawfully, arbitrarily, and capriciously, and abused its discretion in the following particulars:

5.

Paragraph c of the prayer of the complaint heretofore filed is amended and supplemented to read:

That upon final hearing, the Court find that the orders of the defendant Interstate Commerce Commission served March 16, 1965, June 4, 1965, and August 13, 1965, in the Commission's Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* are unlawful, null, and void;

Respectfully submitted,

Peter T. Beardsley
Richard R. Sigmon
Harry J. Jordan
R. Edwin Brady
1616 P Street, N. W.
Washington, D. C. 20036

Roland Rice
Rice, Carpenter & Carraway
618 Perpetual Building
Washington 4, D. C.

/s/ Edward T. Lyons, Jr.
420 Denver Club Building
Denver, Colorado

Attorneys for Intervening Plaintiffs

Of Counsel:

Jones, Meiklejohn, Kehl & Lyons
420 Denver Club Building
Denver, Colorado

[fol. 500] Certificate of Service (omitted in printing).

[fol. 501]

In the United States District Court

For the District of Colorado

Civil Action No. 9205

[Title omitted]

Motion for Leave to File Supplemental Complaint—
Filed September 17, 1965

Intervening Plaintiff, Freight Forwarders Institute, moves the Court to file a supplemental complaint, a copy of which is attached hereto as Exhibit A, on the grounds and for the reasons indicated in the "Amended Motion for Leave to File Supplemental Complaint" of the Plaintiffs-in-chief.

Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado 80202.

Harry C. Ames, 529 Transportation Building, Washington, D. C., 20006.

Giles Morrow, 1012 Fourteenth Street, N. W., Washington, D. C., 20005.

Of Counsel:

Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado, 80202.

[File endorsement omitted]

[fol. 502] EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 9205

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed October 20, 1965

Comes Now the Intervening Plaintiff, Freight Forwarders Institute, by its attorneys, and for its Supplemental Complaint filed pursuant to leave granted by Order of the Court on , 1965, respectfully alleges and shows:

Paragraphs 1, 13, 15 and 16 of the Complaint-in-chief heretofore filed, and in which this Intervening Plaintiff joined in its intervening complaint, are amended to the extent, and in the manner sought by Plaintiffs-in-chief.

Respectfully submitted,

/s/ EDWARD T. LYONS, JR.
420 Denver Club Building
Denver, Colorado 80202

HARRY C. AMES
529 Transportation Building
Washington, D. C. 20006

GILES MORROW
1012 Fourteenth Street, N. W.
Washington, D. C. 20005

Of Counsel:

JONES, MEIKLEJOHN, KEHL & LYONS
420 Denver Club Building
Denver, Colorado 80202

[File endorsement omitted]

[fol. 503] Certificate of Service (omitted in printing).

[fol. 504]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT IN INTERVENTION—Filed September 13, 1965

Intervening Plaintiffs, Ringsby Truck Lines, Inc.; Navajo Freight Lines, Inc.; Denver Chicago Trucking Company, Inc.; Illinois-California Express, Inc.; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Western Gillette, Inc.; IML Freight, Inc.; and Consolidated Copperstate Lines, move the Court for leave to file a Supplemental Complaint, a copy of which is attached hereto as Exhibit "A", on the ground that certain transactions, occurrences and events stated therein have happened since the filing of Intervening Plaintiffs' original Complaint in Intervention which directly relate to the subject matter thereof and that it is in the interest of expedition and justice that all related issues between Defendants and these Intervening Plaintiffs be litigated in this action.

David Axelrod, 39 South LaSalle Street, Chicago, Illinois, 60603.

Eugene T. Liipfert, Berl I. Bernhard, 1035 Universal Building North, Washington, D. C., 20009, Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, 80202, Attorneys for Intervening Plaintiffs.

Of Counsel:

Axelrod, Goodman & Steiner, 39 South La Salle Street, Chicago, Illinois, 60603.

[File endorsement omitted]

Verner, Liipfert & Bernhard, 1035 Universal Building North, Washington, D. C., 20009.

Jones, Meiklejohn, Kehl & Lyons, 420 Denver Club Building, Denver, Colorado, 80202.

[fol. 505]

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 9205

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed October 20, 1965

To the Honorable Judges for the District Court
Of the United States for the District of Colorado:

Come Now the Intervening Plaintiffs, Ringsby Truck Lines, Inc.; Navajo Freight Lines, Inc.; Denver Chicago Trucking Company, Inc.; Illinois-California Express, Inc.; Pacific Intermountain Express Co.; Transcon Lines; Watson-Wilson Transportation System, Inc.; Western Gillette, Inc.; IML Freight, Inc.; and Consolidated Copperstate Lines, by their attorneys and for their Supplemental Complaint filed pursuant to leave granted by Order of this Court on , 1965, the Intervening Plaintiffs above named respectfully allege and show:

1.

Paragraph 1 of the Complaint in Intervention heretofore filed herein is amended and supplemented so as to read:

"This is a proceeding to enjoin, set aside, annul, and suspend, Orders entered on March 15, 1965, May 28, 1965, and August 11, 1965 by the Interstate Commerce

[File endorsement omitted]

Commission (hereinafter referred to as the "Commission") in administrative proceedings identified as Finance Docket No. 23324, *Railway Express, Incorporated, Stock,* and Finance Docket No. 23374, *Southern Pacific Company* v. *Greyhound Corporation and Railway Express, Incorporated,* brought by The Denver and Rio Grande Western Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Southern Pacific Company."

2.

Paragraph 7 of the Complaint in Intervention heretofore filed herein is amended and supplemented so as to read:

[fol. 506] "Copies the material records in the proceedings in Finance Docket 23324, duly certified to by the Secretary of the Commission according to law (Title 49, U.S.C. § 16(3)), have been or will be filed with the Court, which records are made a part of this Complaint in Intervention by reference, and are hereinafter referred to collectively as the "record" and respectively by the names of the documents comprising such records."

3.

Paragraph 12 of the Complaint in Intervention heretofore filed herein is amended and supplemented so as to add the following sentences at the end thereof:

"Thereafter, on or about June 7, 1965, a petition was filed by Transcontinental Bus System, Inc., et al., requesting the Commission to find that an issue of national transportation importance was involved. The Commission, by Chairman Webb, on June 16, 1965, issued an Order postponing the effective date of the Order entered on March 15, 1965, as amended by the

Corrected Order entered on May 28, 1965. Thereafter by Order and Corrected Order, both dated August 11, 1965, the Commission acting in general session (1) recalled the proceeding from Division 3, (2) vacated and set aside the Order of the Appellate Division 3, dated May 28, 1965, and reopened the proceedings for consideration on the present record, (3) on reconsideration affirmed the action taken by Division 3 in its Order dated March 15, 1965, (4) dismissed, as moot, the petition requesting a finding that an issue of general transportation importance is involved, and (5) ordered that the Order of March 15, 1965, as affirmed, be effective 30 days from August 13, 1965. Thereafter, the Commission, by Chairman Webb, on August 17, 1965, issued an Order postponing until further order of the Commission the effective date of the Order of March 15, 1965 as modified by the Corrected Order of August 11, 1965."

4.

Paragraph 13 of the Complaint in Intervention heretofore filed herein is amended and supplemented by changing the introductory clause thereof so as to read:

"The Commission in making and issuing said Orders of March 15, 1965, May 28, 1965 and August 11, 1965 erred as a matter of law and in abuse of its discretion in the following particulars:"

5.

Paragraph 14 of the Complaint in Intervention heretofore filed herein is amended and supplemented so as to read:

"If the Orders of March 15, 1965, May 28, 1965, and August 11, 1965 are enforced, said Orders will cause Plaintiffs to suffer immediate and irreparable damage, in that:

(a) Once the transaction is approved and consummated, it would be extremely difficult, if not impos-

sible, to secure the divestment of control by GREYHOUND and to restore the status quo at a later date [fol. 507] and, in any event, Plaintiffs would be compelled to incur substantial expense in lengthy and complicated legal proceedings to that end.

(b) If said Orders of March 15, 1965, May 28, 1965, and August 11, 1965 are permitted to become effective and GREYHOUND is permitted to acquire a twenty percent stock interest in REA, competition for transportation of express traffic would be substantially lessened and a tendency toward monopoly of such transportation set in motion which would handicap and in time foreclose the competition of these Plaintiffs for transportation of express and other traffic."

David Axelrod
39 South LaSalle Street
Chicago, Illinois 60603

Eugene T. Liipfert
Berl I. Bernhard
1035 Universal Building North
Washington, D. C. 20009

/s/ EDWARD T. LYONS, JR.
Edward T. Lyons, Jr.
420 Denver Club Building
Denver, Colorado 80202

Attorneys for Intervening Plaintiffs

Of Counsel:

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39 South LaSalle Street
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Jones, Meiklejohn, Kehl & Lyons
420 Denver Club Building
Denver, Colorado 80202

[fol. 508] Certificate of Service (omitted in printing).

[fol. 509]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ORDER CONCERNING SUPPLEMENTAL COMPLAINTS, ANSWERS THERETO, AND BRIEFING SCHEDULE—Entered and Filed October 20, 1965

This Matter coming on to be heard this day upon the written stipulations of the parties with respect to filing supplemental complaints and answers thereto and the filing of briefs, and the Court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered:

1. The motion of plaintiffs for leave to file amended supplemental complaint is granted, the amended supplemental complaint of plaintiffs shall be deemed served and filed herein as of the date of this order, the motions of intervening plaintiffs to file supplemental complaints are each granted, and the supplemental complaints of intervening plaintiffs shall be deemed filed and served herein as of the date of this order.

2. Unless separate answers to any such supplemental complaint are served by October 15, 1965, the answers heretofore filed by defendants and intervenor defendants [fol. 510] to the original complaint intended to be supplemented by such supplemental complaint shall be deemed to refer and respond to such complaint as supplemented by such supplemental complaint.

3. The Briefs of plaintiffs and the briefs of intervening plaintiffs shall be filed and served by November 15, 1965.

[File endorsement omitted]

4. Briefs of defendants and of intervenor defendants shall be filed and served by December 15, 1965.

5. Reply briefs of plaintiffs and intervening plaintiffs, if any, shall be filed and served by January 4, 1966.

By the Court:

Jean S. Breitenstein, United States Circuit Judge.

Alfred A. Arraj, United States District Court Judge.

Hatfield Chilson, United States District Court Judge.

It Is Hereby Stipulated by and between the parties hereto, by their respective counsel, that:

1. The foregoing order is agreed to and may be entered.

2. The parties request that the Court set this case for oral argument upon the merits as soon as practicable after the January 10, 1966, session of the Court of Appeals of the [fol. 511] Tenth Circuit and on a day certain so that out-of-town counsel may plan accordingly.

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., 550 Fifteenth Street, Denver, Colorado, 80202.

Royce D. Sickler, T. A. White, 1531 Stout Street, Denver, Colorado, 80217.

R. K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois, 60604.

Harry B. LaTourette, C. W. Fiddes, 1517 West Front Street, Tyler, Texas, 75702.

Jeremiah C. Waterman, 205 Transportation Building, Washington, D. C., 20006, By Robert S. Gast, Jr., Attorneys for Plaintiffs, The Denver and Rio Grande Western Railroad Company, et al.

Jones, Meiklejohn, Kehl & Lyons, Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, 80202.

Peter T. Beardsley, Richard R. Sigmon, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C., 20036, By Edward T. Lyons, Jr., Attorneys for Intervening Plaintiffs, American Trucking Associations, Inc., et al.

[fol. 512]

Jones, Meiklejohn, Kehl & Lyons, Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, 80202.

Harry C. Ames, 527 Transportation Building, Washington, D. C., 20006.

Giles Morrow, 1012 Fourteenth St., N. W., Washington, D. C., 20005, By Edward T. Lyons, Jr., Attorneys for Intervening Plaintiff, Freight Forwarders Institute.

Jones, Meiklejohn, Kehl & Lyons, Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, 80202.

Axelrod, Goodman & Steiner, David Axelrod, 39 South La Salle Street, Chicago, Illinois, 60603.

Verner, Liipfert and Bernard, Eugene T. Liipfert, Berl I. Bernhard, 1035 Universal Building North, Washington, D. C., 20009, By Edward T. Lyons, Jr., Attorneys for Intervening Plaintiffs, Ringsby Truck Lines, Inc., et al.

Lawrence M. Henry, United States Attorney, Denver, Colorado.

Robert L. Wright, Acting Assistant Attorney General.

John H. D. Wigger, Attorney, Department of Justice, Washington, D. C., 20530, By Robert E. Long, Attorneys for Defendant, The United States of America.

[fol. 513]

Robert W. Ginnane, General Counsel.

Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C., 20423, By Robert E. Long, Attorneys for Defendant, The Interstate Commerce Commission.

Hodges, Silverstein & Harrington, Joseph G. Hodges, 1360 Denver Club Building, Denver, Colorado, 80202.

William J. Taylor, 219 East 42nd Street, New York, New York, 10017.

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York, 10005, By Joseph G. Hodges, Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated.

Dawson, Nagel, Sherman & Howard, 1900 First National Bank Building, Denver, Colorado, 80202.

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California, 94108, By Winston S. Howard, Attorneys for Intervenor-Defendant, The Greyhound Corporation.

[fol. 514]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

ORDER AUTHORIZING INTERVENTION—Entered and Filed November 10, 1965

This Matter having come before the Court on the "Motion of Transcontinental Bus System, Inc., et al. for Leave to Intervene as Plaintiffs"; and it appearing that the Plaintiffs and Defendants stipulate that said Motion may be granted; and it further appearing that Title 28 of the United States Code, Section 2323, grants said Movants an unconditional right to intervene in this proceeding as parties Plaintiff; and this Court being fully advised in the premises, it is therefore

Ordered, Adjudged and Decreed that the "Motion of Transcontinental Bus System, Inc., et al. for Leave to Intervene as Plaintiffs" be, and it is hereby, granted; and

Further Ordered that said Transcontinental Bus System, Inc., et al. be, and they are hereby, made parties Plaintiff in this action, and that said Intervening Plaintiffs be, and they are hereby, authorized forthwith to participate in all respects as Plaintiffs in this suit and the Order of October 20, 1965, covering briefing schedule shall apply also to said intervening plaintiffs; and

Further Ordered that the tendered Complaint of said Intervening Plaintiffs be and it is hereby ordered to be filed in this action and unless separate answers to such Complaint of said Intervening Plaintiffs is filed by 36 days from and after service of said Complaint on them,

[File endorsement omitted]

the answers to the original Complaints heretofore filed by the defendants and intervening defendants shall be deemed to refer to and respond to the Complaint of the intervening plaintiffs.

Dated at Denver, Colorado this 10th day of November, 1965.

By the Court:

Jean S. Breitenstein, United States Circuit Judge;

Alfred A. Arraj, United States Circuit Judge;

Hatfield Chilson, United States Circuit Judge.

[fol. 515] Approved as to Form:

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., 550 Fifteenth Street, Denver, Colorado, 80202;

Royce D. Sickler, T. A. White, 1531 Stout Street, Denver, Colorado, 80217;

R. K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois, 60604;

Harry B. LaTourette, C. W. Fiddes, 1517 West Front Street, Tyler, Texas, 75702;

Jeremiah C. Waterman, 205 Transportation Building, Washington, D.C. 20006;

By Robert S. Gast, Jr.;

Attorneys for Plaintiffs, The Denver and Rio Grande Western Railroad Company, et al.

Jones, Meiklejohn, Kehl & Lyons, Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colorado, 80202;

Peter T. Beardsley, Richard R. Sigmon, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N.W., Washington, D.C., 20036;

By Edward T. Lyons, Jr.;

Attorneys for Intervening Plaintiffs, American Trucking Association, Inc., et al.

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Axelrod, Goodman & Steiner, David Axelrod, 39 South La Salle Street, Chicago, Illinois, 60603;

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By Edward T. Lyons, Jr.;

Attorneys for Intervening Plaintiffs, Ringsby Truck Lines, Inc., et al.

Lawrence M. Henry, United States Attorney, Denver, Colorado;

Robert L. Wright, Acting Assistant Attorney General;

John H. D. Wigger, Attorney, Department of Justice, Washington, D.C., 20530;

By Robert E. Long;

Attorneys for Defendant, The United States of America.

Robert W. Ginnane, General Counsel;

Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D.C., 20423;

By Robert E. Long;

Attorneys for Defendant, The Interstate Commerce Commission.

[fol. 516] Hodges, Silverstein & Harrington, Joseph G. Hodges, 1360 Denver Club Building, Denver, Colorado, 80202;

William J. Taylor, 219 East 42nd Street, New York, New York, 10017;

Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York, New York, 10005;

By Joseph G. Hodges;

Attorneys for Intervenor-Defendant, Railway Express Agency, Incorporated.

Dawson, Nagel, Sherman & Howard, 1900 First National Bank Building, Denver, Colorado, 80202;

McCutchen, Doyle, Brown, Trautman & Enersen, 601 California Street, San Francisco, California, 94108;

By Winston S. Howard;

Attorneys for Intervenor-Defendant, The Greyhound Corporation.

[fol. 517]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 9205

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; and SOUTHERN PACIFIC COMPANY, Plaintiffs,

and

RINGSBY TRUCK LINES, INC.; NAVAJO FREIGHT LINES, INC.; DENVER CHICAGO TRUCKING COMPANY, INC.; ILLINOIS-CALIFORNIA EXPRESS, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; TRANSCON LINES; WATSON-WILSON TRANSPORTATION SYSTEM, INC.; WESTERN GILLETTE, INC.; CONSOLIDATED COPPERSTATE LINES; AMERICAN TRUCKING ASSOCIATIONS, INC.; REGULAR COMMON CARRIER CONFERENCE; FREIGHT FORWARDERS INSTITUTE; TRANSCONTINENTAL BUS SYSTEM, INC.; AMERICAN BUSLINES, INC.; ARKANSAS MOTOR COACHES LTD., INC.; BAYSHORE BUS LINES, INC.; CONTINENTAL BUS SYSTEM, INC.; CONTINENTAL CRESCENT LINES, INC.; CONTINENTAL PANHANDLE LINES, INC.; CONTINENTAL SOUTHERN LINES, INC.; CONTINENTAL TENNESSEE LINES, INC.; DENVER-COLORADO [fol. 518] SPRINGS-PUEBLO MOTORWAY; DENVER-SALT LAKE-PACIFIC STAGES, INC.; CONTINENTAL PACIFIC LINES, INC.; MIDWEST BUSLINES, INC.; SMOKY MOUNTAIN STAGES, INC.; TENNESSEE TRAILWAYS, INC.; UNION BUS LINES, INC.; and MUSCATINE, DAVENPORT AND CLINTON BUS COMPANY, Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

RAILWAY EXPRESS AGENCY, INCORPORATED, and THE GREYHOUND CORPORATION, Intervening Defendants.

Lee, Bryans, Kelly & Stansfield, Robert S. Gast, Jr., Royce D. Sickler, and T. A. White, Denver, Colorado; R. K. Knowlton, Chicago, Illinois; Harry B. LaTourette and C. W. Fiddes, Tyler, Texas; and Jeremiah C. Waterman, Washington, D.C., for Plaintiffs.

David Axelrod, Chicago, Illinois; Eugene T. Liipfert and Ronald B. Natalie, Washington, D. C.; and Edward T. Lyons, Jr., Denver, Colorado, for Intervening Plaintiffs Ringsby Truck Lines, Inc., Navajo Freight Lines, Inc., Denver Chicago Trucking Company, Inc., Illinois-California [fol. 519] Express, Inc., Pacific Intermountain Express Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Western Gillette, Inc., and Consolidated Copperstate Lines.

Peter T. Beardsley, Harry J. Jordan, R. Edwin Brady, Roland Rice, and Rice, Carpenter & Carraway, Washington, D.C., for Intervening Plaintiffs American Trucking Associations, Inc., and Regular Common Carrier Conference.

William H. Dempsey, Jr., Martin J. Flynn, Harry C. Ames, and Giles Morrow, Washington, D. C.; and Edward T. Lyons, Jr., Denver, Colorado, for Intervening Plaintiff Freight Forwarders Institute.

Warren A. Goff, Dallas, Texas; and John R. Barry, Denver, Colorado, for Intervening Plaintiffs Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches Ltd., Inc., Bayshore Bus Lines, Inc., Continental Bus System, Inc., Continental Crescent Lines,

[File endorsement omitted]

Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company.

Robert L. Wright, Acting Assistant Attorney General, and John H. D. Wigger, Attorney, Department of Justice, Washington, D. C.; and Lawrence M. Henry, United States Attorney, Denver, Colorado, filed an answer for the Defendant United States of America neither supporting nor opposing the action of the Interstate Commerce Commission.

[fol. 520] Robert W. Ginnane, General Counsel, and Robert S. Burk, Attorney, Interstate Commerce Commission, Washington, D. C., for Defendant Interstate Commerce Commission.

Hodges, Silverstein & Harrington, Denver, Colorado; Cravath, Swaine & Moore and William J. Taylor, New York, N. Y., for Intervening Defendant Railway Express Agency, Incorporated.

Winston S. Howard and Dawson, Nagel, Sherman & Howard, Denver, Colorado; William W. Schwarzer, Stephen R. Grant, and McCutchen, Doyle, Brown, Trautman & Enersen, San Francisco, California, for Intervening Defendant The Greyhound Corporation.

Before Breitenstein, Circuit Judge, and Arraj and Chilson, District Judges.

OPINION—April 11, 1966

BREITENSTEIN, Circuit Judge.

This suit concerns the validity of an order of the Interstate Commerce Commission authorizing the issuance of stock by Railway Express Agency, Incorporated (REA),

for sale to The Greyhound Corporation.[1] Various carriers [fol. 521] and associations protested the Commission action. The plaintiffs are five railroads, all of which are stockholders of REA. Twenty-nine motor carriers, or associations of motor carriers, have intervened as plaintiffs. REA and Greyhound have intervened on the side of the defendants. We have jurisdiction under 28 U.S.C. § 1336. A three-judge district court is required by 28 U.S.C. § 2325.

REA, Greyhound, and the plaintiff railroads are all subject to the Interstate Commerce Act (the Act). REA is a common carrier by express on railroads and a common carrier by motor vehicle. It competes with Greyhound in the transportation of property between points in all states of the United States, except Alaska and Hawaii.

[fol. 522] REA filed an application under §§ 20a and 214 of the Act[2] for authority to issue 500,000 shares of its common stock to Greyhound at $20 per share upon certain terms and conditions. Various protests, none of which challenged the facts stated by the applicant, alleged that Greyhound was trying to get control of REA in violation of § 5 of the Act,[3] that the issuance of the stock would not conform to the standards of § 20a, and that an evidentiary hearing should be held. The United States Department of Justice intervened asserting that the Commission should act under § 11 of the Clayton Act[4] to determine if the proposed transaction violated § 7 of that Act.[5] Southern Pacific Company, one of the protestants and a plaintiff herein, filed with the Commission a complaint against Greyhound

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[1] The orders were entered in Finance Docket No. 23324, *Railway Express Agency, Incorporated, Stock,* and in Finance Docket No. 23374, *Southern Pacific Co.* v. *Greyhound Corp. and Railway Express Agency, Inc.*

[2] 49 U.S.C. §§ 20a and 314.

[3] 49 U.S.C. § 5.

[4] 15 U.S.C. § 21.

[5] 15 U.S.C. § 18.

[fol. 523] and REA asserting that the transaction encompassed control or management of REA by Greyhound and requesting action by the Commission under § 5(7) of the Act to forbid the consummation of the proposal.

The Commission held no evidentiary hearing. Its March 15, 1965, order recited the background of the transaction, the corporate situation of REA, and the procedures which had been followed. It said that the filing of a § 5 application is "permissive and may not be required;" that an investigation of possible violations of § 5 of the Act and § 7 of the Clayton Act "would not be appropriate at this time;" and that a hearing was not necessary "for a determination of the application for authority to issue said stock under the provisions of sections 20a and 214." The Commission specifically found that the REA stock issue was lawful, compatible with the public interest, reasonably necessary, and consistent with its intended purpose. The [fol. 524] complaint of the Southern Pacific under § 5(7) was dismissed and the stock issue was authorized. This action was then brought to set aside and vacate the order. The Commission has stayed the order until the completion of judicial review.

From 1929 to 1961 REA was operated on a non-profit basis and either leased facilities or used facilities owned by other carriers. In 1961 it changed to a profit-and-loss basis and embarked on a program of capital expenditures to acquire and modernize terminals and equipment. The financing of such program was difficult because of a short history of profitable operations and an unfavorable ratio of debt to equity. Before 1963 only railroads could be stockholders of REA. Although this requirement was then removed, the charter provision that all sales of outstanding shares are subject to a right of first refusal by the railroad shareholders was retained.

In February, 1964, Greyhound submitted a proposal to REA which in essence covered acquisition of control of [fol. 525] REA by Greyhound subject to Commission approval. The offer was not accepted. Thereafter meetings

of executives of the two companies produced a "Memorandum of Understanding" which outlined "potential savings or advantageous arrangements" which would result from the merger of the companies or the consolidation of certain activities. These included joint use of terminals, garages, communication facilities, and sales solicitation.

In July, 1964, Greyhound made a second offer which, with some modifications, was approved by the REA Board of Directors and stockholders.[6] The terms of the agreement appear in the resolution adopted by the REA Board. The important provisions are:

> (1) Greyhound will acquire a 20% stock interest in REA through purchase, at $20 a share, of 500,000 [fol. 526] shares of authorized but unissued stock not subject to the right of first refusal;
>
> (2) Greyhound will have a 20% representation on the REA Board;[7]
>
> (3) If the transaction is approved by the Commission and consummated, Greyhound, for a period of 60 days, will stand ready to purchase, at $20 a share, up to 1,000,000 shares of the outstanding REA stock, subject to the right of first refusal;
>
> (4) The REA Board will seriously consider the sale of REA stock to the airlines and the public; and
>
> (5) "The REA Board shall adopt a resolution declaring the intention to consider seriously and work [fol. 527] toward a long-term agreement between REA and The Greyhound Corporation to consolidate oper-

[6] The stockholders approved by a vote of 1,654,572 shares for and 269,800 shares against. The plaintiffs herein own 211,762 shares.

[7] This is to be accomplished by amending the by-laws to increase the board membership from 23 to 25. The numbers of directors nominated by the various railroad districts remain constant but the at-large directors will be increased from 5 to 7.

ating functions and facilities, and to cooperate in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage."

The main thrust of the plaintiffs' arguments is that the Commission should not have approved the stock issuance without a hearing. Consideration of this issue requires an analysis of the statutes upon which reliance is placed.

The REA application was filed under §§ 20a and 214.[8] Section 20a(2) declares that a carrier shall not issue stock without Commission authorization. Section 20a(6) says: "The commission may hold hearings, if it sees fit, to enable [fol. 528] it to determine its decision upon the application for authority." Accordingly, on a § 20a(2) application the Commission has the discretion to determine whether a hearing shall be held.

Section 5(2)(a)(i) covers, among other things, acquisitions of control of one carrier by another through stock ownership and makes such acquisition lawful if approved by the Commission. Section 5(2)(b) requires a carrier seeking authority for such a transaction to present an application to the Commission. Section 5(4) makes it unlawful for a person to enter into a transaction within the scope of § 5(2)(a) without compliance therewith. Section 5(7) authorizes but does not require the Commission on complaint or on its own initiative, but after notice and hearing, to investigate and determine whether any person is violating § 5(4). Here again the holding of a hearing is discretionary with the Commission.

[fol. 529] Section 7 of the Clayton Act[9] prohibits a corporation engaged in commerce from directly or indirectly acquiring in whole or part the stock of another corporation engaged in commerce "where in any line of commerce in any section of the country, the effect of such acquisition

[8] Section 214 makes § 20a applicable to motor carriers.

[9] 15 U.S.C. § 18.

may be substantially to lessen competition, or to tend to create a monopoly." Section 11 of the same act[10] imposes on the Commission the duty of enforcing compliance with § 7 where, as here, the parties concerned are common carriers subject to the Interstate Commerce Act. Section 5(11) of the latter act says that the authority conferred thereunder shall be exclusive and plenary and that any carriers participating in transactions authorized or approved under the section "are relieved from the operation of the antitrust laws."

[fol. 530] The argument is that approval of the stock issuance may not be given without determination, after hearing, of the question of control arising under § 5 of the Act and of the question of the competitive consequences arising under § 7 of the Clayton Act. Although these are somewhat related we shall consider them separately.

The § 5 question is raised in two ways, by the protests filed to the § 20a application and by the complaint of Southern Pacific under § 5(7). These pleadings do not controvert any facts put of record by REA and do not allege any additional factual matters. The pleaded conclusions add nothing. The briefs suggest that cross-examination of the REA and Greyhound officials who participated in the intercompany negotiations may reveal that the true plan contemplates control of REA by Greyhound but no solid basis is shown for the suggestion.

Control is "an issue of fact to be determined by the special circumstances of each case."[11] The difficulty here is [fol. 531] that important and decisive facts are presently unknown. The transaction contemplates the issuance to Greyhound of 500,000 shares out of a total authorization of 2,576,000 shares. The offer of Greyhound to purchase an additional 1,000,000 shares from the present shareholders is subject to such shareholders' right of first re-

[10] 15 U.S.C. § 21.

[11] Rochester Telephone Corp. v. United States, 307 U.S. 125, 145.

fusal. This means that when Greyhound proposes the purchase of any such stock, or a block thereof, all shareholders, including the plaintiffs, may acquire that stock themselves. In its order the Commission noted that Greyhound had been told by railroad representatives, including representatives of the plaintiff railroads, "that it would not acquire one additional share under the offer to purchase up to one million shares subject to the right of first refusal by such railroad shareholders." If Greyhound acquired the 1,000,000 shares it would own over 50% of the REA stock. If the dissident railroads acquired the same amount the [fol. 532] shoe would be on the other foot as they would then own nearly 50%.

REA has no executive committee and is governed by a 23-man board of directors. Of these 7, 6, and 5 are respectively nominated by the eastern, western, and southern railroad districts and 5 are chosen at large. The transaction contemplates an increase in the board to 25 members with 5 of the at-large members nominated by Greyhound. Any further change in the board requires the two-thirds vote necessary to amend the by-laws. Even if Greyhound acquires a total of 1,500,000 shares the possibility of a change in the make-up of the board would require the cooperation of other shareholders.

The plaintiffs emphasize that portion of the agreement requiring the REA Board "to consider seriously and work toward" an arrangement for consolidation and cooperation "in all lawful, feasible and jointly advantageous ways to effect economies, improve service and increase public receptivity and patronage." This commits REA only to se- [fol. 533] rious consideration. The effect will depend on the outcome of the offer to purchase the 1,000,000 shares and the subsequent actions of the REA Board.

The briefs of the parties devote much space to the Breswick litigation.[12] There the district court first set aside

[12] Breswick & Co. v. United States, S.D.N.Y., 138 F.Supp. 123, reversed Alleghany Corp. v. Breswick & Co., 353 U.S. 151, deci-

Commission approval of a stock issue on jurisdictional grounds. The Supreme Court reversed noting that the matter of a hearing was governed by § 20a(6).[13] The case was remanded for consideration of whether the stock issue violated the Interstate Commerce Act.[14] The district court after commenting that under § 20a the Commission was not required as a matter of law to hold an evidentiary hearing [fol. 534] went on to say that the Commission could not approve the issuance of stock without determining the control question which had been raised.[15] The Supreme Court again reversed saying in a short per curiam that the only question open on the remand was whether the transaction violated the Act.[16] Our reading of the decisions convinces us that the Supreme Court has left open the question of whether, when a control question is raised, it must be decided in advance of a § 20a approval of the issuance of stock. In our view a categorical answer cannot be given. In some instances consideration of the public interest may require such determination and in other instances it may not. Generally, the question of control must be answered on a case by case basis. Here we have a situation where the Commission has found that the answer cannot be reached on the basis of the presently known facts. Devel- [fol. 535] opments subsequent to the stock issuance must be awaited.

The intervening plaintiffs argue that the Commission breached its statutory duty in refusing to institute a proceeding to determine whether the transaction violated § 7

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sion on remand Breswick & Co. v. United States, S.D.N.Y., 156 F.Supp. 227, reversed Alleghany Corp. v. Breswick & Co., 355 U.S. 415, decision on remand Breswick & Co. v. United States, S.D.N.Y., 160 F.Supp. 754.

[13] 353 U.S. 151, 175.

[14] Ibid.

[15] 156 F.Supp. 227, 230.

[16] 355 U.S. 416.

of the Clayton Act. This point was raised before the Commission by the Department of Justice which has not pursued the matter before us. In the interval between Commission action and court hearing the Supreme Court decided Seaboard Air Line R.R. v. United States, 382 U.S. 154. In that case two railroads filed with the Commission an application for authority to merge. The Commission approved subject to certain conditions. The district court reversed, concluding that the Commission's analysis of the competitive effects of the merger was fatally defective because the Commission had not determined whether the merger violated § 7 of the Clayton Act. The Supreme Court reversed the district court, holding on the authority of [fol. 536] McLean Trucking Co. v. United States, 321 U.S. 67, 80, 85-87, and Minneapolis & St. Louis Ry. v. United States, 361 U.S. 173, 186, that the Commission may approve a merger notwithstanding a potential violation of the antitrust laws if it makes adequate findings, after weighing the effects of the curtailment of competition against the advantages of improved service, that the merger would be consistent with the public interest under § 5(2)(b). We see no reason why the principles announced in Seaboard as applicable to a § 5 merger proceeding do not apply to a § 20a stock issuance proceeding. We believe that the Commission has followed those principles. It has not shut its eyes to the competitive effects. All it has done is to say that in the circumstances presented the public interest requires the issuance of the stock and that determination of the competitive effects will be appropriate for consideration after the chain of events started by the stock issuance [fol. 537] is ascertainable rather than conjectural.

Whether the approach is under § 5 of the Interstate Commerce Act or § 7 of the Clayton Act the outcome is the same. The Commission has the responsibility of giving effect to the national transportation policy. In the performance of that responsibility the Commission has decided that the REA-Greyhound transaction meets the standards fixed by § 20a(2) and that determination of the

control and competition questions must await developments subsequent to the issuance of the 500,000 shares of REA stock to Greyhound. We are convinced that the Commission took the proper course. In Denver Union Stock Yard Co. v. Producers Livestock Marketing Assoc., 356 U.S. 282, 287, the Supreme Court repeated the observation first made in United States v. Storer Broadcasting Co., 351 U.S. 192, 205, that Congress did not intend an agency "to waste time on applications that do not state a valid basis for a hearing." The principle applies here. Until the facts are de-
[fol. 538] veloped by occurrences after the stock issuance, hearings on control and competitive effects are no more than an exercise in futility. In the circumstances it is not our prerogative to interfere with what we deem to be a reasonable exercise by the Commission of its discretionary powers.[17] The Commission did not decide, and we do not decide, any questions relating to control or competition. They are for the future.

Finally, the intervening plaintiffs argue that the order must fall because the Commission has not made the requisite findings and has not stated the basis of its decision.[18] We do not agree. The facts are not disputed. The Commission decided that it was not appropriate to resolve
[fol. 539] control and competition questions at this time and that the § 20a(2) standards for approval of stock issuance had been met. In our opinion the Commission order is clear and understandable and presents an adequate basis for judicial review.

The clerk shall forthwith enter judgment for the defendants dismissing the action.

Done at Denver, Colorado, this 11th day of April, 1966.

Jean S. Breitenstein, United States Circuit Judge.
Alfred A. Arraj, United States District Judge.
Hatfield Chilson, United States District Judge.

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[17] See United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536.

[18] See Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168-169; Securities and Exchange Commission v. Chenery Corp., 318 U.S. 80, 93-95, 332 U.S. 194, 196-197.

[fol. 540]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, et al., Plaintiffs,

and

RINGSBY TRUCK LINES, INC. et al., Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

RAILWAY EXPRESS AGENCY, INCORPORATED, and THE GREYHOUND CORPORATION, Intervening Defendants.

JUDGMENT OF DISMISSAL—Entered and Filed April 11, 1966

Pursuant to the Memorandum Opinion filed in the above-entitled action directing the Clerk to forthwith enter a judgment dismissing the action, it is, therefore

Ordered that the action and plaintiffs' complaint, and the complaints of the intervening plaintiffs be, and the same are hereby, dismissed.

Dated at Denver, Colorado, this 11th day of April, 1966.

By Order of the Court: G. Walter Bowman, Clerk.

[File endorsement omitted]

[fol. 541]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 3, 1966

I.

Notice is hereby given that The Denver and Rio Grande Western Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, and Southern Pacific Company, plaintiffs, and American Trucking Associations, Inc., Regular Common Carrier Conference, Freight Forwarders Institute, Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches Ltd., Inc., Bayshore Bus Lines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental [fol. 542] Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., Muscatine, Davenport and Clinton Bus Company, Ringsby Truck Lines, Inc., Navajo Freight Lines, Inc., Denver Chicago Trucking Company, Inc., Illinois-California Express, Inc., Pacific Intermountain Express Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Western Gillette, Inc., and Consolidated Copperstate Lines, intervening plaintiffs in the above-entitled action, hereby appeal to the Supreme Court of the United States

[File endorsement omitted]

from the final judgment entered in this action on April 11, 1966, dismissing the complaints of the plaintiffs and intervening plaintiffs.

This appeal is taken pursuant to 28 U.S.C., Sections 1253 and 2101(b).

II.

The Clerk will please prepare a transcript of the record in the cause for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

Documents filed in Finance Docket No. 23324:

1. Application filed October 7, 1964.
2. Supplement to Application filed October 13, 1964.
3. Petition of Freight Forwarders Institute, filed October 20, 1964.
4. Petition and Protest of Southern Pacific Company, filed October 20, 1964.
5. Petition and Protest of The Denver and Rio Grande Western Railroad Company, filed October 22, 1964.

[fol. 543] 6. Petition of Transcontinental Bus System, Inc., et al filed October 22, 1964.

7. Petition and Protest of National Trailways Bus System, filed October 22, 1964.
8. Petition and Protest of The Atchison, Topeka and Santa Fe Railway Company, filed October 22, 1964.
9. Petition of Transcontinental Bus System, Inc., et al., filed October 23, 1964.
10. Petition and Protest of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, filed October 28, 1964.
11. Petition and Protest of The Missouri Pacific Railroad Company, filed November 2, 1964.

12. Petition of The Greyhound Corporation, filed November 9, 1964.

13. Petition of the United States Department of Justice, filed November 9, 1964.

14. Petition and Protest of American Trucking Associations, Inc., and Regular Common Carrier Conference, filed November 9, 1964.

15. Return to Information Request to Railway Express Agency, Incorporated, filed November 18, 1964.

16. Reply of Railway Express Agency, Incorporated, filed November 18, 1964.

17. Order of the Interstate Commerce Commission, entered December 2, 1964.

18. Petitions for Leave to Intervene of Denver Chicago Trucking Company, Inc., et al., filed January 21, 1965.

19. Order of the Interstate Commerce Commission, entered February 5, 1965.

Documents filed in Finance Docket No. 23374:

20. Complaint filed November 3, 1964.

21. Notice of the Interstate Commerce Commission dated November 13, 1964.

22. Answer of Railway Express Agency, Incorporated, filed December 2, 1964.

23. Motion of Railway Express Agency, Incorporated, filed December 2, 1964.

24. Answer of The Greyhound Corporation, filed December 3, 1964.

25. Motion of The Greyhound Corporation, filed December 3, 1964.

[fol. 544] 26. Reply of Southern Pacific Company, filed December 21, 1964.

Documents filed in Finance Dockets Nos. 23324 and 23374:

27. Order of the Interstate Commerce Commission, entered March 15, 1965.

28. Petition of American Trucking Associations, Inc., and Regular Common Carrier Conference, filed April 2, 1965.

29. Petition of Denver Chicago Trucking Company, Inc., et al., filed April 7, 1965.

30. Petition of Freight Forwarders Institute, filed April 8, 1965.

31. Reply of Railway Express Agency, Incorporated, filed April 9, 1965.

32. Petition of Transcontinental Bus System, Inc., et al., filed April 14, 1965.

33. Petition of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, filed April 14, 1965.

34. Petition of Freight Forwarders Institute, filed April 14, 1965.

35. Petition of Southern Pacific Company, filed April 14, 1965.

36. Petition of The Atchison, Topeka and Santa Fe Railway Company, filed April 15, 1965.

37. Petition of The Denver and Rio Grande Western Railroad Company, filed April 15, 1965.

38. Notice of the Interstate Commerce Commission, dated April 16, 1965.

39. Reply of Railway Express Agency, Incorporated, filed April 30, 1965.

40. Corrected Order of the Interstate Commerce Commission, entered May 28, 1965.

41. Petition of American Trucking Associations, Inc., Regular Common Carrier Conference, and Motor Common Carriers for Reconsideration, filed April 15, 1965.

42. Reply of The Greyhound Corporation filed May 15, 1965.

43. Petition of Transcontinental Bus System, Inc., et al., filed June 7, 1965.

44. Order of the Interstate Commerce Commission entered June 16, 1965.

[fol. 545] 45. Order of the Interstate Commerce Commission, entered August 11, 1965.

46. Corrected Order of the Interstate Commerce Commission, entered August 11, 1965.

47. Order of the Interstate Commerce Commission, entered August 17, 1965.

Other Documents:

48. Opinion of the Court dated April 11, 1966.

49. Judgment of Dismissal dated April 11, 1966.

50. This Notice of Appeal.

III.

The following questions are presented by this appeal:

1. Whether the District Court erred in holding that under Section 20a(2) of the Interstate Commerce Act, 49 U.S.C. 20a(2), the Interstate Commerce Commission was not obliged to determine whether the transaction would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and to deny the application if the transaction would violate that section?

2. Whether the District Court erred in holding that the Commission had the discretion to approve the transaction without determining its probable anticompetitive impact?

3. Whether the District Court erred in holding that the Commission had discretion to approve the transaction, where the Court concluded that the Commission had not made any determination respecting Section 5(4) of the Interstate Commerce Act, 49 U.S.C. 5(4)?

4. Whether the District Court erred in holding that the Interstate Commerce Commission had not made any determination respecting Section 5(4) of the Interstate Com- [fol. 546] merce Act, 49 U.S.C. 5(4); and, if the Commission did make such a determination, whether its action was supported by the record?

5. Whether the District Court erred in holding that the Interstate Commerce Commission had discretion to approve the transaction without conducting a hearing under Sections 20a(2) or 5(7) of the Interstate Commerce Act, 49 U.S.C. 20a(2), 5(7), or under Section 11 of the Clayton Act, 15 U.S.C. 21?

6. Whether the District Court erred in holding that the Commission made requisite findings and properly stated the basis of its decision?

Dated: May 2, 1966.

Respectfully submitted,

Royce D. Sickler, 1531 Stout Street, Denver, Colorado 80217;
R. K. Knowlton, 80 East Jackson Boulevard, Chicago, Illinois 60604;
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Jeremiah C. Waterman, 205 Transportation Building, Washington, D. C. 20006;
Attorneys for Appellants The Denver and Rio Grande Western Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, St. Louis Southwestern Railway Company, St. Louis

Southwestern Railway Company of Texas, and Southern Pacific Company.

[fol. 547]

William H. Dempsey, Jr., Martin J. Flynn, 734 Fifteenth Street, N. W., Washington, D. C. 20005;
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Giles Morrow, 1012 Fourteenth Street, N. W., Washington, D. C. 20005;
Attorneys for Appellant Freight Forwarders Institute.

Warren A. Goff, 315 Continental Avenue, Dallas, Texas, Attorney for Appellants Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches Ltd., Inc., Bayshore Bus Lines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Smoky Mountain Stages, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company.

Peter T. Beardsley, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036;
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Attorneys for Appellants American Trucking Associations, Inc., and Regular Common Carrier Conference.

[fol. 548]

David Axelrod, Axelrod, Goodman & Steiner, 39
Eugene T. Liipfert, Ronald B. Natalie, Verner, Liipfert & Bernhard, 1875 Connecticut Avenue, N.W., Washington, D. C. 20009;
Attorneys for Appellants Ringsby Truck Lines, Inc., Navajo Freight Lines, Inc., Denver Chicago Truck-

ing Company, Inc., Illinois-California Express, Inc., Pacific Intermountain Express Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Western Gillette, Inc., and Consolidated Copperstate Lines.

Robert S. Gast, Jr., Lee, Bryans, Kelly & Stansfield, 550 Fifteenth Street, Denver, Colorado 80202 (Phone 222-3524), Attorneys for Appellants.

[fol. 549] Certificate of Service (omitted in printing).

[fol. 551]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9205

[Title omitted]

SUPPLEMENTAL DESIGNATION OF TRANSCRIPT OF RECORD TO NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 25, 1966

Come now the plaintiffs and intervening plaintiffs in the above entitled action, appellants pursuant to their Notice of Appeal to the Supreme Court of the United States heretofore filed in this action, and give notice of Supplemental Designation of Transcript of Record to be transmitted to the Supreme Court of the United States.

Appellants hereby strike designations Nos. 48, 49 and 50 of paragraph II in their Notice of Appeal to the Supreme Court of the United States heretofore filed and in lieu thereof submit the following document designations under the sub-caption "Other Documents" of paragraph II in the Notice of Appeal as designations in addition to Documents 1 through 47 as follows:

[File endorsement omitted]

Other Documents:

48. Complaint of The Denver and Rio Grande Western Railroad Company, et al.

49. Complaint of intervening plaintiffs American Trucking Associations, Inc., et al.

50. Complaint of intervening plaintiff Freight Forwarders Institute.

[fol. 552] 51. Complaint of intervening plaintiffs Ringsby Truck Lines, Inc., et al.

52. Complaint of intervening plaintiffs Transcontinental Bus System, Inc., et al.

53. Answer of intervenor-defendant Railway Express Agency, Incorporated.

54. Answer of intervenor-defendant The Greyhound Corporation.

55. Amended Answer of intervenor-defendant Railway Express Agency, Incorporated.

56. Answer of intervenor-defendant The Greyhound Corporation to the Complaint of intervening plaintiffs American Trucking Associations, Inc., et al.

57. Answer of intervenor-defendant The Greyhound Corporation to the Complaint in Intervention of Ringsby Truck Lines, Inc., et al.

58. Answer of intervenor-defendant The Greyhound Corporation to Complaint of intervening plaintiff Freight Forwarders Institute.

59. Answer of intervenor-defendant Railway Express Agency, Incorporated to Complaint of intervenor-plaintiffs American Trucking Associations, Inc., et al.

60. Answer of intervenor-defendant Railway Express Agency, Incorporated to Complaint of intervenor-plaintiffs Ringsby Truck Lines, Inc., et al.

61. Answer of intervenor-defendant Railway Express Agency, Incorporated to Complaint of intervenor-plaintiff Freight Forwarders Institute.

62. Amended Motion for Leave to File Supplemental Complaint of The Denver and Rio Grande Western Railroad Company.

63. Motion for Leave to File Supplemental Complaint of American Trucking Associations, Inc., et al.

64. Motion for Leave to File Supplemental Complaint of Freight Forwarders Institute.

65. Motion for Leave to File Supplemental Complaint of Ringsby Truck Lines, Inc., et al.

66. Stipulation on or about October 4, 1965 relating to the Motions for Leave to File Supplemental Complaints.

67. Order concerning Supplemental Complaints, Answers thereto, and briefing schedule.

68. Order authorizing intervention of Transcontinental Bus System, Inc., et al., entered on or about November 15, 1965.

69. Opinion of the Court dated April 11, 1966.

70. Judgment of Dismissal dated April 11, 1966.

[fol. 553] 71. Notice of Appeal to the Supreme Court of the United States, dated May 2, 1966.

72. This Supplemental Designation to the Notice of Appeal.

Dated this 25th day of May, 1966.

Respectfully submitted,

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R. K. Knowlton, 80 E. Jackson Blvd., Chicago, Illinois 60604;

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Harry C. Ames, 529 Transportation Bldg., Washington, D. C. 20006;

Giles Morrow, 1012 Fourteenth St., N.W., Washington, D. C. 20005;

Attorneys for Appellant Freight Forwarders Institute.

[fol. 554]

Warren A. Goff, 315 Continental Avenue, Dallas, Texas, Attorney for Appellants Transcontinental Bus System, Inc., American Buslines, Inc., Arkansas Motor Coaches Ltd., Inc., Bayshore Bus Lines, Inc., Continental Bus System, Inc., Continental Crescent Lines, Inc., Continental Panhandle Lines, Inc., Continental Southern Lines, Inc., Continental Tennessee Lines, Inc., Denver-Colorado Springs-Pueblo Motorway, Denver-Salt Lake-Pacific Stages, Inc., Continental Pacific Lines, Inc., Midwest Buslines, Inc., Tennessee Trailways, Inc., Union Bus Lines, Inc., and Muscatine, Davenport and Clinton Bus Company, and Smoky Mountain Stages, Inc.

Peter T. Beardsley, Harry J. Jordan, R. Edwin Brady, 1616 P Street, N. W., Washington, D. C. 20036;

Roland Rice, 618 Perpetual Building, Washington, D. C. 20004;

Attorneys for Appellants American Trucking Associations, Inc., and Regular Common Carrier Conference.

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Eugene T. Liipfert, Ronald B. Natalie, Verner, Liipfert & Bernhard, 1875 Connecticut Ave., N.W., Washington, D. C. 20009;

Attorneys for Appellants Ringsby Truck Lines, Inc., Navajo Freight Lines, Inc., Denver Chicago Trucking Company, Inc., Illinois-California Express, Inc., Pacific Intermountain Express Co., Transcon Lines, Watson-Wilson Transportation System, Inc., Western Gillette, Inc., and Consolidated Copperstate Lines.

Robert S. Gast, Jr., Lee, Bryans, Kelly & Stansfield, 550 Fifteenth Street, Denver, Colorado 80202, Attorneys for Appellants.

[fol. 555] Certificate of Service (omitted in printing).

[fol. 556]

IN UNITED STATES DISTRICT COURT

LETTER—Filed May 26, 1966

May 26, 1966

Hon. G. Walter Bowman,
Clerk of the United States
District Court,
District of Colorado
United States Courthouse
Denver, Colorado

Re: The Denver and Rio Grande Western RR Co., et al. vs. United States of America and Interstate Commerce Commission, et al., defendants.

Civil Action No. 9205

Dear Mr. Bowman:

Inadvertently the Supplemental Designation of Transcript of Record to Notice of Appeal to the Supreme Court of the United States which I filed yesterday did not include the Answer of the United States of America and the Answer of the Interstate Commerce Commission.

As additional designation to paragraph II of the original Notice of Appeal under the sub-caption "Other Documents" please add the following:

62A. Answer of United States of America.

62B. Answer of the Interstate Commerce Commission.

It is requested that this letter be filed as an addendum to Supplemental Designation of Transcript of Record of Notice of Appeal to the Supreme Court of the United States so that it will not be necessary for either the United States of America or the Interstate Commerce Commis-

[File endorsement omitted]

sion to make a counter-designation to include the above two documents.

I certify that a copy of this letter has been forwarded this date to all attorneys named and included in the Certificate of Service attached to the Supplemental Designation.

Royce D. Sickler, 1531 Stout Street, Denver, Colorado, 80217, One of the Attorneys for Appellants.

RDS rw

x

[fol. 557]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action 9205

[Title omitted]

ORDER TO TRANSMIT ORIGINAL PLEADINGS AND ORDERS—
Entered and Filed May 11, 1966

This Action having been appealed to the Supreme Court of the United States, it is

Ordered that the Clerk of this Court transmit to the Supreme Court of the United States all of the original pleadings, orders and certified copies of the Interstate Commerce Commission proceedings designated by the parties for inclusion in the record on appeal. It is

Further Ordered that on the completion of the proceedings, the Clerk of the Supreme Court of the United States shall return the same to the Clerk of this Court.

Dated at Denver, Colorado, this 11th day of May, 1966.

By the Court: Jean S. Breitenstein, Circuit Judge.

[fol. 558] Clerk's Certificate (omitted in printing).

[File endorsement omitted]

[fol. 559]

SUPREME COURT OF THE UNITED STATES

No. 305—October Term, 1966

THE DENVER AND RIO GRANDE WESTERN RAILROAD CO., et al., Appellants,

v.

UNITED STATES, et al.

Appeal from the United States District Court for the District of Colorado.

ORDER NOTING PROBABLE JURISDICTION—October 17, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.